



Hanck pinx:

R. White sculp:



*Herculeas ultra quem jactat rauca columnas
Fama nec officio par tamen illa suo)
En tibi BARLOUM potuit quæ Sculptor, at ipsa
Arte licet claram vincit ut umbra manum.
Ora venusta vides, et nobilis Atria mentis;
Quod nil et interius nulla Tabella dabit.*

The Tullie D.D.



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The Tullie D.D.

Rich. Haynes.

SEVERAL

Miscellaneous and Weighty
Cases of Conscience,

Learnedly and Judiciously Resolved

By the Right Reverend Father in God,

Dr. *THOMAS BARLOW*,

Late Lord-Bishop of *Lincoln*.

VIZ.

- I. Of Toleration of Protestant Dissenters.
- II. The King's Power to pardon Murder.
- III. Objections from *Gen. 9. 6.* answered.
- IV. Mr. *Cottington's* Case of Divorce: With the Judgments of Dr. *Allestrey*, Dr. *Hall*, Sir *Richard Lloyd*, Sir *Richard Raines*, Dr. *Oldys*, and the Doctors of *Sorbonne*, upon the same.
- V. For Toleration of the Jews.
- VI. About Setting up Images in Churches.
- VII. *An Dominium fundatur in Gratia?*

With two Pages omitted in the English *Machiavel*, and his Lordship's Censure thereupon.

London, Printed, and sold by Mrs. *Davis*
in *Amen-corner*, 1692.

2d
356

The Bookseller's P R E F A C E to the Reader.

THE Reader may be pleased to take notice, that the following Tracts were written by the late Eminent and Learned Father of our Church, Dr. Thomas Barlow, Lord-Bishop of Lincoln; and printed from MSS. written with his own Hand.

The Occasions these.

I. The Case of the Lawfulness of Toleration of the *Jews*, was writ at the Request of a Person of Quality, in the late troublesome Times; when the *Jews* made Application to *Cromwel*, for their Re-admission into *England*.

II. The Case of Toleration of Christian Dissenters, was written to, and at the Request of the Honourable and Learned Mr. *Robert Boyle*, 1660. soon after the Restoration of *K. Charles II.*

III. Whether it be lawful for his Sacred Majesty *K. Charles II.* to reprieve or pardon a Person, convicted and legally condemned for Murder; written upon occasion of Mr. *St. John's* being unfortunately convicted for the unhappy

The Bookseller

Death of Sir *William Estcourt* Bar.

IV. The Case of Murder, in Answer to an Objection then made, from *Gen. 9. 6. That Kings have not Power to pardon Murder.*

V. Mr. *Cottington's* Case, concerning the Validity or Nullity of his Marriage with *Gallina*, (her former Husband then living) 1671. Mr. *Cottington* applying himself, and Mr. *Brent* coming from the then Earl of *Danby*, to request his Lordship's Opinion therein. With a further Resolution of the same; as also the Judgments of Dr. *Allestrey*, Dr. *Hall*, (now Lord-Bishop of *Bristol*) Sir *Richard Lloyd*, Sir *Richard Raines*, Dr. *William Oldys*, and the Doctors of *Sorbonne* at *Paris*, in point of Law and Conscience, upon the same.

VI. A Breviate of the Case concerning setting up Images in the Parish-Church of *Moulton*, in the Diocess and County of *Lincoln*, 1681. Writ upon occasion of this Learned Bishop's being cited before the Dean of the *Arches*, for suffering such Images to be defaced, &c. And upon reading of which Case, so truly and evidently stated, the whole Prosecution (which was then violently and virulently enough carried on) against him was stopp'd.

VII.

to the Reader.

VII. Whether that *Dominion* is founded on Grace, be a Tenet chargeable on the Church of Rome?

VIII. One Folio Leaf omitted out of *Machiavel* in English, with the Bishop's Censure thereupon.

The Reader may please to observe, in Mr. Cottington's Case, the Counsel use the Name of Frichinono, for the Husband of Gallina, which was his Proper Name; but the Bishop that of Patrimoniale, which was the Title of his Publick Office, and by which latter he was frequently known and called by at Turin. The Resolution of this Case may be of great use, it being never so fully stated before. Davila tells us in his fifth Book, that Hen. 4. was married to Q. Margaret, at Nostredame, by the Cardinal of Bourbon, in Presence of the whole Court; and she was given in Marriage by Charles 9. her Brother: and after a long Cohabitation, the Cardinal of Joyeuse, the Pope's Nuncio, and the Arch-Bishop of Arles, being delegated by the Pope, nulled the Marriage, propter vim & metum; Q. Margaret alledging, she was forced to it by her Brother. And the Sentence gave liberty to the King and Queen to marry whom they would: And accordingly, the King afterwards married Mary

Vide Hist. H. 4.
France, by the
Bp of Rhodes,
and Monsieur
D'Ossat's Letters.
Davila;
lib. 3.

The Bookseller, &c.

Mary of Medicis, one of whose Daughters was Henrietta Maria, the Wife of our K. Charles I. and Cardinal D'Ossat justified the Legality of this Sentence, tho there had been no Cause shewn. But the Law of Nations does not oblige our Courts to execute or pronounce Sentence according to Foreign ones.

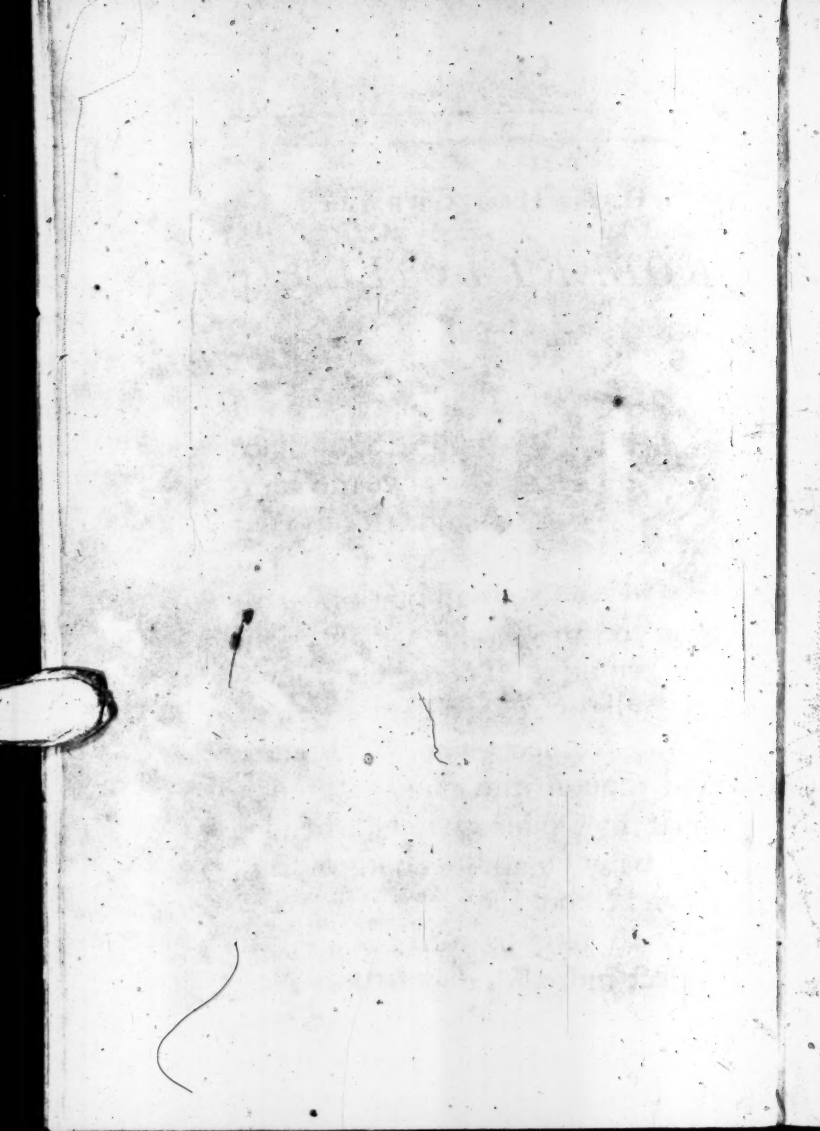
Now tho the Bishop gave these Cases to his Friends, when first writ, with his leave to print them; yet they, fearing some of them might prejudice his further Promotions in the Church in those Days, forbore Publication of them. Tho we must do his Lordship this Right, to avér, that he had no regard to that: so careleß was he of the Event of any Action he thought himself obliged to do, Religionis causâ, that he has been often heard to say occasionally, as a kind of Principle, viz. He who thinks to save any thing by his Religion, but his Soul, will be a Loser in the end.

And his Lordship lived to see the Church of England of his Opinion, in being indulgent to Dissenters; for in that incomparable LETTER TO A DISSENTER, written by the best and noblest Pen of our Age, and upon the Measures of that Church, in the Reign of K. James II. the Dissenters are told in express Words, That the Church of England is convinc'd of its Error in being severe to them.

THE
CASE of a TOLERATION
IN
Matters of Religion.

P. B. 35.

C.



To the HONOURABLE
ROBERT BOYLE, Esq;

S I R,



Tis now a good while ago since you gave me command, (for so your Desires are, and shall be to me) to give you my Opinion in writing, concerning the Toleration of several Religions, or Opinions, in a well-governed Church and State. And though it matters not much what my Opinion be, and (besides my many Disabilities both of Body and Mind, the little time I have (by reading or meditation, to collect more, or digest those No-

tions I have, renders me incapable of saying much, (or indeed any thing which you do not know already ;) yet (in obedience to your command) something I shall say, (for, *Cur me posse negem, quod tu posse putes ?*) which may be an argument of my confiding in your Candor and Goodness, and of my daring to trust you with all my Infirmities, and an evidence, not of my ability, but willingness to serve you. In short then, I shall give you some of my Thoughts concerning Toleration, tho not in that exact order and method, not with that clear explication, and confirmation of the Truth, as I really desire, and the Subject deserves.

I say then,

I. The Toleration we speak of, is a Toleration of several Religions, or several Opinions concerning
ing

ing it : and therefore Atheists (if there be any such) come not under it. For he who acknowledges no God , cannot possibly be of any Religion , which essentially includes both an acknowledgment, and worship of a Deity.

II. Toleration of Religions presupposeth several Religions , or different Opinions (*Respectu Doctrinæ, Disciplinæ* , or both) for without such dissent, Religions cannot be different.

III. Now amongst several Religions in any Nation ; all cannot be true, (*ἐν τῷ ἀληθείᾳ* , as *Jamblichus* tells us truly, *Truth is one, and cannot differ from it self*) ; and that which is owned and established by the just Authority of any Nation, is supposed to be the True Religion : It follows, that Toleration must necessarily relate to those Religions, and ways of Worship , which are

The Case of a Toleration

(at least supposed) false, as being different from that which the Nation (that tolerates them) owns, and establishes as true. I say, *supposed to be false*: For it may, and many times does happen, that the False Religion may be established, and the true only tolerated. So in *France* Popery is the Religion owned, and Protestantism only tolerated; in *England* contrary.

VI. Now this *Toleration*, or *Establishment*, must relate to some (and the same) Authority. That Authority which establishes the True, must tolerate the Religion, or Religions which are supposed false; for we speak of an Authoritative and Legal Toleration. So that as the Supreme Legislative Power must (and only can) legally establish the True, so it only can tolerate those ways of Worship which are supposed to be false.

V. And

V. And here further, As this Legal Establishment brings a two-fold obligation on those who submit to it; 1. An obligation to Obedience, and a conformity in their Practice to the Established Law; And 2. An obligation to the Punishments (mentioned in the Law) in case of Disobedience: So on the other side, a publick, and Legal Toleration exempts those to and for whom it is granted,

1. From the *obligation to Obedience*, and conforming themselves to the established way of Worship: For Toleration intrinsically notes the taking off such Obligation.

2. It exempts them from *those Punishments* which are (to those who have submitted to such a way of Worship) the consequents of non-obedience, and non-conformity to the Established Religion.

For no man can be justly punished for *non-obedience* to any Law, who is not under the *obligation* of it.

VI. Once more ; As those to whom such Toleration is granted, may justly expect impunity, and exemption from all penal Sufferings, tho they conform not to the way of Worship publickly established ; so on the other side, they

•(a) Privilegia quæ contemplatione Religionis indulta sunt, Catholicæ tantum Legis observatoribus prodesse oportet: Hæreticos autem & Schismaticos ab his privilegiis alienos esse volumus. Imperat. Constantinus, ad Dracilianum, l. i. de Hæreticis in Cod. Theodosiano. pag. 493:

cannot reasonably expect the (a) Rewards and Encouragements which a Prince distributes to those who chearfully obey, and give conformity to the Religion established.

ed. For as Rewards and Punishments are the *Sepimenta Legis*, the great Mounds and Hedges to keep men to their duty and obedience to any Law of God, or Man, (hope of

of Reward encouraging men to obedience, and fear of Punishment frightening them from disobedience) so they go together, and are inseparable, and belong only to those who are under the obligation of such Law. So that he to whom the Law is not given, (and to these who have a Toleration it is not) as he need not fear punishment for Non-conformity (the Law not obliging him to it) so he cannot expect, or hope for those Rewards, which are the encouragements of that obedience, which he refuseth to give. Those then who are under the obligation of such Law, are (in one respect) in a better condition, because they may justly expect from their Prince Rewards and Encouragements, proportionable to the measure of their Obedience: So on the other side, those who have the Toleration, are
(in

(in another respect) in a better condition, because they need not fear any Punishment for their Non-conformity.

7. It must be remembred, that it is a *Toleration* we speak of, not an Approbation of those Religions, or ways of Worship which differ from the Religion established in a Nation. For the Established Religion being always supposed to be true, (and as such owned by the Authority establishing it) the ways of Worship tolerated only, must of necessity be (supposed at least to be) false, and so cannot be approved by that Authority, which (for just Reasons) does, and may tolerate them. For such an approbation of the False, would be a condemnation of the True Religion; and so, if they approve what they tolerate, they condemn what they establish: which is such a
contra-

contradictory piece of Indiscretion and Injustice, as hardly any Authority can be guilty of.

VIII. This premised, the grand Query will be; Whether, and how far the Supream Power may, and ought to grant such a Toleration to Religions, and ways of Worship, differing from that established?

Query.

Now seeing the granting of such a Toleration (as almost all other humane Actions) may be good or bad, according to the various Circumstances, and several Conditions,

Answer.

1. Of the Power that grants.
2. Of the Persons to whom the Grant is made.
3. Of the Religions tolerated.
4. And of the time in which such Toleration is granted.

It

It cannot be expected that I, (or any body else) should give one **Absolute and Categorical Answer** to the intite Query: and therefore I shall crave leave to say something towards an **Answer**, by several steps and degrees, in these following Positions.

1. Then, it is to be considered, who they are who desire such a **Toleration**? their number and quality at home, and what Friends and Assistants they may have abroad. For if the Persons desiring such **Toleration**, be so considerable for number and strength at home; or for their assistance abroad, that a War, or dangerous Insurrections and Seditions may follow (if a **Toleration** be denied) to the hazard of the publick Peace and safety of the Common-weal; Then (I think) the Magistrate (in Prudence and Conscience) may, and ought

to grant their Desires; and rather tolerate a False Religion (with such prudent Qualifications, and for such time as shall be agreed upon) than hazard the unsettlement and ruine of the True. For as in the Body Natural we endure a Gangrened Member with much pain and patience (tho without hopes of cure) when it cannot be cut off without endangering the whole; so in the Body Politick, or Ecclesiastical, an erring part may, and ought to be endured, and tolerated, when the cutting off would hazard the weal of the whole. And indeed such a Toleration, in such a Case, is rather necessary than voluntary in the Magistrate: only he (in this case) makes a vertue of necessity, giving that (by way of favour and kindness) freely, which probably they might have by force. Thus he secures the publick Peace,
and

and the Religion established, obliges the Dissenters by the civility and courtesie of a moderate Toleration; and yet all this is indeed but granting impunity, when he cannot punish. And this is most consonant to the Principles of right Reason, and the perpetual Practice of all Nations. For *Quod multis peccatur inultum est*; when Seditions have happened in a Commonwealth, or Mutinies in an Army, if the Seditious and Mutineers were many, it hath ever been thought more prudent to pardon, than punish. *Multitudo peccantium pœnam tollit, licet non peccatum.* As it is impossible to punish universally, so 'tis ever dangerous to punish a major, or any great and considerable part of a Community (a). *Defensio communis furoris est, furentium multitudo.* And (I believe) where ever Protestants are tolerated in Popish

or

(a) Minutius
Felix Octav.

pag. 77.

or Catholick Countries, 'tis from this principle, That they do not think it prudent or safe for themselves, to persecute the Protestants within their Territories. It has been (and is) the opinion of wise men, that the *Spaniard* by a mild and moderate Toleration might have compassed that in the *Netherlands* at the beginning, which (unhappily taking the contrary way) hath cost him so vast a proportion of Treasure and Blood, and is not compassed yet, nor ever like to be. This particular will be considerable in the present condition of this Kingdom, wherein (by the unhinging of all Government, and an unhappy Civil War) Papists, Schismatics and Sectaries, are multiplied into so great a number, that possibly it may be more safe for the publick to pardon than punish, to grant a moderate Toleration,
than

than run the hazard of further divisions and bloodshed. This I only propose (in *thesi*) to be considered: But (in *hypothesi*) what is particularly most fit to be done in this time and Nation, I shall not be so confident as to undertake the determination, but (according to my duty) leave it to the great prudence of those to whom God has given a greater measure of understanding and authority for such a business; and constantly pray for a blessing upon their endeavours in settling this divided Nation.

2. But admit that the numbers of those who dissent from the Religion established in a Nation, be not so great, nor their Qualities and Assistants so considerable, as that the State need fear any new War, or publick disturbance; Is the Magistrate then bound in prudence and piety to punish, or may he

he (without violation of either) tolerate? To answer this, we must consider,

1. The nature of the punishments to be inflicted.
2. The nature of the false Religions or Opinions for which they are inflicted.

The first; All punishments to be inflicted, are either Ecclesiastical or Civil: The

1. *Spiritual, in foro interno, ex Potestate clavium*, to be inflicted by the Church, by those who have Spiritual jurisdiction, and are *πρῶτες οἰκτες*, and Stewards of Gods Household.
2. *Temporal, in foro externo, jure gladii*, and belong to the Civil Magistrate, as he is *Custos & Vindex utriusque Tabulae*.

Now for the first of these, I say further, that the Church has no Commission from Christ or his

C

Apostles,

Apostles, or any practice of the Primitive Church, to punish any man, either

1. With loss of *Livelihood*, by Pecuniary Mulcts, or Confiscations.

2. Nor loss of *Liberty* by Imprisonment.

3. Nor loss of *Life* by Capital punishment.

The saying is old, and true, (admitted by all sober Protestants) *Dominium non fundatur in gratia*. Pagans and Infidels have a good title to their Patrimonies, and a just propriety in their Estates real or Personal; to become Christians,

* *Libertas in-*
astimabilis res
est. Paul. c. 2.
ad Edict. Leg.
106. Stat. de
Reg. Juris.
And again,
In finita esti-
matio est liber-
tatis. Id. l. 13.
ad Plantiam,
F. de R. Juris.
l. 176. Sec. fi-
nali.

neither gives them a new, nor confirms their old title. So that if they turn Hereticks, or (which is worse) Infidels, they do not forfeit their livelihood (much less their * liberty or life) the Church may (*per modum pœnæ*) take away what (on condition) they gave, if

that

that condition be not made good. Our admission into the Church by Baptism, gives us Communion with the Church, and a right to all those Spiritual advantages for Heaven, which are dispensed in it (as hearing the Word, receiving the Sacrament, Absolution upon a serious and real penitence, &c.) these the Church gave, and (for heresie or impiety) may take away, but no more. If any Bishop or Church-Officers have any further power (as to imprison, lay Pecuniary Mulcts, &c.) this they have *ex Indulgentiâ Principum*, not from Christ, but the Civil Power of the Commonwealth where they live.

2. This being so, I observe further, that the persons we now speak of (as Papists, Schismatics, and Sectaries) dissenting from the Established Religion, need no toleration or grant of Impunity, as

to Church-Censures, or Spiritual punishments ; as not being liable, or any way obnoxious to them. For the Church having no power to punish any save those of her own Body, (by Penance, Excommunication, &c.) of which the persons we now speak, are not (as neither acknowledging the Churches power, nor living in Communion with her) it follows, that as she hath no power to punish them (they not being Members of her Body) so they have no need of a Toleration, or Act of Impunity, as to Ecclesiastical punishments, to which (on the supposition now made) they are not obnoxious. And if the Church should Excommunicate them, it were but (at least) in their opinion, *Brutum fulmen*, and *vanæ, & sine viribus iræ*. they would value the Excommunication of our Church, no more than we value theirs,

theirs, that is, nothing at all.

3. So then, the Impunity this Toleration (we now speak of) must give, is from temporal punishments inflicted by the Civil Magistrate. Now before we can determine what Impunity such a Magistrate may give to men of a false Religion (for so all differing from that publickly Established, are in this case presumed, and supposed to be) we must consider the nature and condition of the Religions or Opinions to be tolerated. And here I conceive,

1. That no State should or will grant a toleration to any Religion, which contains any thing in it which may be destructive to the Civil peace and safety of it self.

*Salus * Populi*, is (in all States) *Su-* ^{* By [*Populus*]}
I understand
the whole

Body Politick, Head and Members, King and People; and not the People only in opposition to the King. *Appellatione populi, viri & civis significatur connumeratis Patriciis & Senatoribus.* Instit. de Jure Nat. Gentium & Civili. L. Lex est.

prema Lex, the Supreme Law, and utmost end of all Authority. This publick safety, may and must be secured, though (if there be no other way) with the ruin of Particulars. For as in the Body Natural, if Fingers or Toes, Legs or Arms, &c. are so corrupted and gangrened that they indanger the whole body, *Ense recidantur*, &c. they are not to be tolerated, but torn off. So in the Body Politick, or Commonweal, if any persons maintain such a Religion as is not consistent with the publick safety, as it were imprudence in the Magistrate to grant, so it were irrational for them to ask or expect a Toleration. For why should any power tolerate that which will ruin it self? Upon this account it will be hard to tolerate

1. Such *Anabaptists* as deny all Magistracy (for such there have been

been, and are) for why should any Prince own and protect them as subjects, who will not obey, or own him as their Prince ?

2. Such as make it a part of their Religion, to believe all Oaths unlawful, and so will take none, (for such there are, whether really or in pretence I know not) for on this account they will refuse all Oaths of Allegiance. And then what tye or obligation can the Prince lay upon them, whereby he may be secured of their Loyalty ? And then why should a Prince secure them (by a Toleration of Impunity) who will not secure him of their Loyalty.

3. Such (especially if their number be considerable) as by the Principles of their Religion, think all War unlawful (as being contradictory to the charity of the Gospel) and by consequence must de-

ny their Prince any Personal assistance in his Wars, though he and his Kingdom be in the utmost hazard and necessity. For if Subjects be once of this opinion (that they will not fight for their King and Country) the Prince is left to be inevitably ruined by the next Invader: It being an easie matter to ruin that Prince whose Subjects will not fight for his preservation.

4. Such, who (although they allow and will take an Oath of Allegiance, yet (by the Principles of their Religion acknowledged a power which can * absolve them from that Oath, and arm them against their Prince, depose him, and dispose of his Kingdom, nay of all the Kingdoms of the world. For in such a case the Prince can never be secure of their Loyalty to him,

* *Vid. Gratian.*
Can. 2, 3, 4.
Causa. 16.
Quest. 6. Innocent.
Part. 5.
Cap. ultimo,
&c.

him, or the publick safety against them. This the Papists do, as appears by General * Councils of their own (and the most Authentique they have) and amongst their greatest Authors (not to trouble you, or my self with any more) † Bellarmine tells us, *Non potest Papa ut Papa, Ordinarie Principes deponere..... tamen potest mutare regna, & vim auferre, & alteri conferre, tanquam summus Princeps Spiritualis, si id necessarium sit ad animarum salutem.* What safety can a Prince have, who has such people for his Subjects, who acknowledged the Pope to be *Summus Princeps*, above all Kings, (so that they are indeed not absolute or

* Vid. Concil. Lateran. sub Innocent. 3. Can. 3. de Hæreticis, apud Petr. Crabb. Tom. 2. pag. 948. Col. 1. & Concil. Trident. Sess. 25. de Reformation. cap. 19. & cap. 20. ubi *emendat* sic habet. *Cogantur omnes Principes Catholici conservare omnia sancta quibus integritas Ecclesiastica declaratur*

† Bellarminus de Romano Pontifice. lib. 5. cap. 6. &c.

liament, command all to come to Common-Prayers (and so all did, Papists and Protestants till 11^o Eliz.) The Pope, *Julius 5.* by his Bull forbids it. The Papists obey him, not the Act of Parliament.

The Supreme Power of this Nation by Act of Par-

supreme,

supreme, but feudatory Princes) and that so far above them, that they may dispose of, and give away their Kingdoms, *Si id necessarium sit ad animarum salutem*. Now he himself being Judge of this necessity (if he had power) he can never want a pretence to depose any King; especially if he be a Protestant, and so (with them) an Heretick. Nay, if he be no Heretick, yet he can depose him for much less faults; so * *Gratian* tells us, that Pope *Zachary* deposed the King of France, *Non tam pro suis iniquitatibus, quam pro eo, quod tantæ potestati esset inutilis*. Nor is this a singular example, for he there adds, *Quod etiam ex autoritate frequenti agit sancta Ecclesia*. And if this *Summus Princeps* decree the deposition of any King, you may be sure he is to be obeyed. So Pope *Stephen* tells us, (in the same *Gratian*)

* *Gratia. Can.*
Alius 3. Lucet. 6. Can. 16.

tian) † *Nulli fas est, vel velle, vel
 posse transgredi Apostolicæ sedis præ-
 cepta, &c.* Nor must we wonder
 at this; for Pope *Agatho* tells us,
 that the Papal Sanctions must irre-
 fragably be obeyed, seeing (with
 them) the Popes Decretals pass for
 † *Canonical Scriptures*, and that in
 the strictest sense of the word *Ca-
 nonical*; as if *St. Peter* himself had
 writ them: *Sic omnes Apostolicæ se-
 dis sanctiones accipiendæ sunt, tan-
 quam Ipsius Divini Petri voce fir-
 matae.* And indeed, the Excom-
 municating of *Queen Elizabeth*,
 and encouraging the *Spaniard* to
 take possession of her Kingdom,
 the murdering of great *Navarre* in
France (approved by the Pope in
 Consistory) and the Powder-Plot
 in *England*, are sad Examples of
 this truth; too evident to be false,
 and too fresh to be forgotten.

† Gratian.
 Can. Nulli. 5.
 Dist. 19.

† Gratian:
 Can. in Ca-
 nonicis 6 Di-
 stinct. 19. &
 Canon. E-
 nim verò 4.
 Ibidem.
 * Idem ibi-
 dem Can. sic
 omnes 2. &
 Juv. Part. 4.
 cap. 238.

'Tis true, *Bellarmino* saith, that
 the

the Pope cannot dispose of Temporal Kingdoms *Directè* and *Ordinariè*, but only *indirectè* (*in ordine ad spiritualia*) and *extraordinariè*: which is no solution, but a plain concession of what we object. For if he may do it *extraordinariè* and *Indirectè*, then 'tis evident he may do it (in their opinion) and then how can a King be secured against the rebellion of such Subjects, and his own deposition, that one side of the distinction cannot do it, so long as the other may? Whether it be done *directè* or *indirectè*, 'tis all one, he is deposed. If my enemy should tell me he could not run me thorough with the one end of his Sword (meaning the Hilt) what security were that to me, when he may do it with the point? If I am kill'd, 'tis no matter which end of the Sword did it. Sure I am, as my enemy (if he have

have a mind to kill me) will make use of the point of his Sword, so the Pope well knows which side of the distinction to make use of when he has a mind to do mischief.

I do not speak this against all Papists, as if none of them could be good Subjects, (for I both believe and know the contrary) but

1. I do not see how the Jesuits and those who believe and own their Principles (who are indeed the Puritans of the *Roman Church*) can be good Subjects to a Protestant Prince, or capable of a Toleration, without indangering the publick peace and safety of the Commonweal.

2. And that others are good subjects (as I know some are) it is to be imputed more to their piety and personal goodness, than the principles of their Religion, divers

vers of which (as might easily and evidently appear) are no good dispositions to Loyalty.

2. And as no King (in prudence) can give a Toleration to such Religions and ways of Worship as are destructive to the Civil State and publick peace of the Commonwealth; so *pari passu*, (and for the same reasons) he cannot tolerate such as are destructive of the Ecclesiastical state or peace

† Vid. Constit. Imp. Honorii & Theod. in Append. Cod. Theod. pag. 31. contra Donatistas, &c. & aliam Constit. ibid. pag. 38. ubi iidem Imperatores in Donatistas, *Pacis & Ecclesie turbatores sententia capitali vindicant.* Et Cod. Theodosii. L. si quis. 31. de Episcopis.

of the † Church; at least so far as they are so, and without such restrictions and qualifications, as may rationally secure the Established way of Worship: For otherwise he should be cruel to the true, while (by a Toleration) he is kind to a *false* Religion.

3. If any Religion, or way of Worship, approve and practise
any

any thing against the Law of Nature, (as Blasphemy, Theft, Perjury, Adultery, &c.) such as all sober men acknowledg to be crimes, and are destructive, or evidently dangerous to the well-being of humane Society; I suppose no prudent Prince should give a Toleration to such. Sure I am Seneca tells us, that no Nation ever did grant impunity to such Impieties.

† *In hoc consensimus* (saith he) *adversus omne maleficium datur actio, & homicidi, veneficii, parricidii, violatarum Religionum, aliubi & aliubi diversa poena est; sed ubique aliqua.* But here it must be observed, that the crimes I now speak of, (to which I would have no impunity or toleration granted) must

1. Be such as are clearly and certainly crimes against the Law of Nature, so that all sober men generally know, and acknowledg them

† Seneca de Beneficiis, lib. 3. cap. 6. num. 2. pag. 38. in Edit. Just. Lipsii. H. Grotius de Jure Belli, lib. 2. cap. 20. Sect. 50. pag. 347.

them to be such. For if it be dubious whether they be crimes or no, or how far, or what measure of malice is in them, then it will be very hard to punish them. For it will seem irrational, and (indeed) unjust to inflict a *certain* punishment, for a dubious and *uncertain* crime. *Certa culpæ cognitio*, must always (in justice) be antecedent to the *Inflictio pænæ*. If I hang a man, I am sure he has (*per modum pænæ*) lost his life, and therefore (*per modum culpæ*) I should be sure of the crime for which I hang him; Seeing it cannot be just to inflict certain death for an uncertain crime.

2. They must not only be confess'd Crimes (to which I now deny Toleration) but also such as are dangerous, and noxious to humane Society. For as † *Lipsius* (on that place of *Seneca*) well observes :

Naturæ

† *Lipsius* in
locum *Seneca*
cæ prædictum num.
27. pag. 47.

Naturæ quodam instinctu , ea maleficia coercent homines & puniunt, quæ societatem convellunt. For there are many crimes against the Law of Nature, and Dictates of Right Reason (as Ingratitude, Lying, breach of Promise, &c. which yet in almost all Nations, have had a Toleration and impunity, and have been left *Odio hominum, & vindictæ Deorum.* So Seneca (in the same place) speaks of Ingratitude

Exceptâ Macedonum gente, non est in ullâ, data adversus ingratum actio; magnumq; hoc argumentum dandum non fuisse. Hoc frequentissimum crimen nusquam punitur, ubique improbatur. Neque tamen absolvimus ingratum, sed cum Difficilis esset incertæ rei æstimatio, tantum odio hominum damnavimus, & inter ea relinquimus, quæ ad Vindices Deos remittimus. Where you see the reason why Ingratitude (though certainly a crime against

D gainst

gainst the Law of Nature) was not punished, but tolerated. . . . *Quia difficilis erat incertæ rei æstimatio*. It was very hard to know when a man was ingrateful, and the measure of his ingratitude, and therefore hard to punish it. All just punishments consisting in a proportion between the sin and the suffering of the person punished, which cannot possibly be known, unless the nature and measure of the crime be first known. 'Tis true (*in thesi*) that all know and confess Ingratitude is a great crime, but (*in Hypothesi*) whether *Titius* be ingrateful to *Sempronius*, and how far, 'tis hard (if not impossible) to know; seeing that cannot be known, unless all the Courtesies and injuries which each have done to other mutually, could certainly be (as indeed they cannot be) comprehended. By the way, when

when Seneca saith, that in nullâ (excepta Macedonum) gente, adversus ingratum dabatur Actio, and so not in Rome; he speaks this of his own time. For afterwards Ingratitude (by the * Roman Law) was highly punished, even with *Maxima capitis Diminutio*, by which the ingrateful person & civitatem & libertatem amisit.

* Institut. de Capitis diminut. L. Maxima.

4. Upon these grounds some Sects amongst us, can have little reason to expect (and the Magistrate as little to grant) a toleration or impunity. As,

1. *Adamites* (such there were) who held a promiscuous use of women.

2. *Quakers* who give no civil respect to any, no not the Magistrate, but curse and rail, and damn all but their own Disciples. These Crimes being evidently against nature, and inconsistent with hu-

mane (much more with Christian) Society, are not to be tolerated, but severely punished. It were vain to reason or dispute with such men, who have cast off all civility, and even humanity it self; *Argumentum baculinum*, is the fittest means (if not to convert, yet) to keep them within some bounds of reason and civility, that they may not make others worse, if they will not be better themselves.

5. These things considered (which relate to matter of fact, and the actions of persons professing a false Religion) we come now to the main Query, concerning matter of Faith and false Opinions: Whether men of a false faith and heretical opinions, may be tolerated, and have a grant of Impunity, or whether the Magistrate is to punish such erring persons? (suppose Sectaries, Papists,

Query.

pists, Socinians, &c. and then how far, how long, with what punishments, and what measure and degrees of them he is to do it? for instance, Whether he may punish them,

1. In their *Purse* only, by Pecuniary *Mullets*, taking away some part, or all their *Livelihood*.

2. Or in their *persons* too, taking away either,

1. Their *liberty* by imprisonment.

2. Or their *City* (the *jus Civitatis*) by *Banishment*.

3. Or their *Life*, by Capital punishments, as the *Donatists* and *Circumcellians* of old, and they of *Rome* (of late) use those whom commonly they miscall Hereticks, consuming those to ashes whom they cannot confute otherwise than with Fire and Faggot; a way not only incongruous, but impious and barbarous, whereby they

may make men coals and cinders, but not Christians. I say the Query is, (supposing those of the Religion differing from that established, to be otherwise peaceable and good Subjects, neither rebelliously or seditiously disturbing the publick peace, nor injuriously wronging their neighbour, for in these cases it is irrational for them to expect, or the Magistrate to grant impunity, Whether the Magistrate may justly grant them a Toleration of their Opinions and Religion (though at least supposed false) or compell them by punishments to the Established way of Worship, which is supposed true and Orthodox?

Answer.

In answer to this, though I shall not say, that it is absolutely unlawful for the Civil Magistrate (in this case) to use temporal, and compulsory, punishments, yet

yet thus much (giving my reasons for it) I think I may safely and truly say, that it will be very difficult and dangerous for him to do it. My reasons are,

1. Because we find no *Warrant* for it in the Gospel; there is neither any *precept* or *practice* of our Saviour, or his Apostles, to compel any to be Christians. The means they used; either to convert Pagans, or continue and confirm Christians, were constant Preaching, and a rational pressing that truth to others, which they had received from God, and believed themselves, a prudent and meek disputing, and reasoning men out of their Errors, a pious life and patient suffering for the truth they Preached: *Verbo & exemplo agebant, non gladio*, it was their Christian patience, not any coercive violence which converted

the world, it was dying themselves, not killing others which planted and propagated the Gospel; *Sanguis Martyrum semen Ecclesia*, it was the blood of the Martyrs, not of murdered Hereticks, which made the field of the Church so fruitful; and by what authority we should do that now, which they thought not fit to do then, I know not. Certainly, as they best knew what means were most proportionable, and congruous both for the plantation and propagation of the Gospel, so we have reason to believe that those *mediums* they made use of, were such; and (on the other side) we may rationally conclude, that had there been any other means as congruous and conducive to the end they aimed at, as those they used, they would not have omitted them. Seeing then neither Christ
nor

nor his Apostles ever commanded, or (by their example or practice) commended violence, or any co-active means to make or confirm Christians, we have great reason to believe, that they conceived such means not congruous; and if so, why should any think otherwise?

It is * reply'd to this, that there are in Scripture examples of coactive punishments; so *Paul* was struck to the ground, and punished with blindness, *Ananias* and *Sapphira* with death, *Elymas* the Sorcerer with blindness, &c.

But these Instances (though urged by great men) are impertinent, as to this case we now speak of: For,

1. When *Paul* was so punished, he was no Christian, (for he was afterwards Baptized) whereas we now speak of different opinions,

Object.

* Hen. Altin-
gius Problem.
Theolog
Part 2. Probl.
20. pag 337.
Williel. Zep-
perus Legum
Mosaicarum
Forens Lib 4.
cap. 3. p. 252.

Ans.

nions, and ways of Worship amongst Christians.

2. He was persecuting the Church with imprisonments and death, in which case we grant violent and coercive means may be used by the Magistrate, to preserve the Church which such Persecutors would destroy.

† In such cases the Magistrate is, (and ought to be) *Nutritus Ecclesie*, and *Defensor fidei*, and may use the Sword against those who abuse it against the Church.

3. The Question is, What man (the Magistrate Civil or Ecclesiastical) may do *jure ordinario*; whether he may punish Heresie or Infidelity with loss of Livelihood, Liberty, or Life? Not what God may do, *Pro domino*, & *jure suo absoluto, extraordinarie*? we deny not but God (who is the searcher and judg of our hearts, who knows perfectly our most secret sins, and inmost iniquities, together with the nature, measure, and aggravations of them) may punish Heresie, Infidelity, or any other sin, how and

and when he will ; so he punished *Ananias* and *Sapphira* with death: But we deny that man (the Magistrate) can do so , *Jure Ordinario*. It is true, it was our Saviour which punished *Paul*, I am *Jesus* whom thou *Act. 9. 5.* persecutest ; and so it may seem, that we have our Saviour's example for coercive punishments. But then we must consider our Saviour ; 1. In the state of Humility, while he was here: 2. In the state of Glory after his Ascension. The Punishment of *St. Paul* was an extraordinary Act of our Saviour after his Ascension, when he was in the state of Glory, and so can be no good warrant or foundation of an Ordinary Power and Jurisdiction in any man here to do the like. For certainly there is little Logick in this consequent, Our glorified Saviour by his absolute power, extraordinarily punished *Paul* with blindness :

Ergo,

Joh. 18. 36.

Ergo, *The Magistrate here may ordinarily do it.* The thing we deny, is, that our Saviour while he was here (in the state of Humility) hath left us any precept or example for coactive punishments: He tells us, that *his Kingdom was not of this world*; it was not a Temporal, but Spiritual Kingdom, and so the Administration of Justice in it, was not by Temporal, but Spiritual punishments. His too zealous Disciples would have had fire call'd for from Heaven, &c. but he tells them *that he came not to destroy, or take away any mans life, but to save it*; and I believe he did not delegate that power to his Apostles, (not to Peter) which he neither did, nor had Commission to use himself. 4. For the Examples of *Ananias and Sapphira*, and *Elimas*, they are as impertinent to the purpose for which they bring them, as that of *Paul*: For, 1. They

1. They were punished for matter of fact, not of faith or opinion concerning Religion; *Ananias* and *Sapphira* for Sacriledg, and robbing God and his Church of the Consecrated things, and *Elimas* for perverting by Sorceries, and seducing Christians; (as by the Text appears) in which cases we do not plead for impunity.

2. Their punishment was extraordinary, and miraculous from the hand of Heaven, not of any man or Magistrate. This is clear in the death of *Ananias*; and tho Act. 5. 3, 4, 5. *Peter* may seem to have had a hand in *Sapphira's* death, yet those words (*vers. 6.*) are *prædicentis, non infligentis pœnam*, he only foretells her, that the hand of God (not his) would be upon her. And so it was too with *Paul* and *Elimas*, The hand of the Lord shall be upon thee, &c. Act. 13. 21. 'Tis the hand of the Lord (not his)

his) that made him blind ; Paul (as a Prophet) foretold, what God (as a just Judge) did. However, 'tis (beyond dispute) evident, that those punishments of *Ananias* and *Elimas* were *Extraordinary* and *Miraculous* ; and therefore cannot possibly be any just foundation of an *ordinary* jurisdiction. But too much of this, for (to me) these examples seem altogether impertinent, and though often urged, yet to little purpose, seeing they prove nothing, save that (sure) they wanted better arguments, who bring such bad ones as these.

Object. 2.

† Hen. Altingius Problem. Theol. Part. 2. Problem. 29. Pag. 333. Will. Zepperus in Explication. LL. Mosaic. Lib. 4. cap. 3. pag. 262. Calvin. in Luc. 14. 23. pag. 182. August. Epist. 50. ad Bonifacium, & alibi passim.

2. It is objected by † many, and great men, that the Gospel does afford examples of coactive and compulsory means used to bring men to the faith. They urge that Parable of the Marriage - feast (Luk.

14. 23.) ἀνάγκασον εἰσελθεῖν, &c. *Compelle intrare*, (as the vulgar Latin) *ut impleatur Domus mea*. On which words St. Augustine thus, *Qui compellitur, quo non vult cogitur: sed cum intraverit, jam volens pascitur*. Hence they infer, that it is (at least) Lawful to use coercive means in case of different Religions, to compell men to the best.

But in answer to this instance, *Answer.* which is so much urged by all those who are against Toleration, I say,

1. *Locus parabolicus non est argumentativus*, Parables are no proofs, nor a fit foundation for concluding Arguments to be built upon.

2. But however it is true, what Grotius observes, that ἀνάγκασον there signifies not any external violence or coercion, but only * *Instanti-*

* Vid. Grotium in Luc. 14. 2, 3. & de Jure Belli, Lib. 2. cap. 20.

*Sect. 48. pag. 345. to the same purpose, Dr. Hammond's *Diodati*, the Assembly-Divines, &c. on Luc. 14. 23.

am vocantis, the instance and importunity of the Call. *Christo enim eo modo convivæ cogi solent*, *sed importunâ flagitatione*. So Theophylact expounds the place, who tells us, that although προαιρετικὸν ἅπασιν τὸ πιστεύειν, that all men do voluntarily believe, yet the Holy Ghost saith, ἐκ ἀπλῶς καλέσται, ἀλλὰ ἀναγκάσαι, not only call, but compell; not that he means any coaction (properly so call'd) or violence, ἀλλ' ἵνα * μάθωμεν, &c. *Sed ut sciamus magnæ Virtutis Dei esse, Gentes credidisse*. And then concludes, Τὸ τῶν περὶ ἡμᾶς ἀγαθὸν τῆς μεταδίδεως δηλῶσαι, θελῶν ἀνάγκην τὸ πρᾶγμα ὠνόμασεν, &c. *Admirabilem translationem significare volens, necessitatem nominavit*. And 'tis evident that the word, [ἀναγκάζειν] many times signifies no more, but an earnest and prevailing importunity, even in Scripture it † self.

3. It is certain and confessed, that

* Theophyl.
in Luc. 14. 23.
Pag. 438. c.

† So Mat. 14.
22. Mark 6.
45. Gal. 11.
14. Vid.
Grot. loco
supra Citato.

that in this Parable the *Gentiles* are meant by those who are said to be *compell'd*; and yet neither St. *Augustine* (who first urged this passage against the *Donatists* and *Circumcellians*) nor any that I know since, affirm Pagans ought to be *compell'd* to Christianity; and so they quite mistake the meaning of the place (who urge it against *Toleration*) and the business they bring it for.

Vide Theophylactum in loc. &c.

2. Besides this, [that there is no example or precept of Christ, or his Apostles, that they did, or we should use violence, or any coercive means, to make, or confirm Christians] there are several express places in the Gospel which strongly perswade the contrary; that no violence or coercion is, or ought to be used; so when some of our Saviours Disciples did Apo-

E statize

Joh. 6. 6, 7:

statize and forsake him, he mildly asks the Twelve, *Will ye also go away?* He neither recalls those who had forsaken him, nor confirms those who stayed, by threatening loss of Livelihood, Liberty, or Life; but saith only, *Will ye also go away?* To go or stay, was *res spontanea voluntatis*, non *coacta necessitatis*; it was a thing of choice, not coercion, which was to make or continue them Christians. *Ostendit se ne velle quidem discipulos nisi volentes*, (saith (a) *Grotius*;) in the Constitutions of *Clemens* (an ancient Book, though not of *Clemens* his compiling) το *αυτεξουσιαν*, &c. *Liberam reliquit hominibus arbitrii potestatem, non morte temporali eos puniens, sed in altero seculo ad reddendam rationem eos vocans.* And again, (b) ο *υκ ανεισους*, &c. *Domini non cogens, sed libertatem suam voluntati permittens, dicebat quidem*
vulgo

Grotius in
Joh. 6. 67.

Athanasius
Epistolâ ad
Solitariam
Vitam a-
gentes.

vulgo omnibus, si quis vult venire post me. Apostolis vero, numquid & vos abire vultis? And the Greek Father thus, (c) ἐρωτᾷ λέγων, &c. Interrogat, an & ipsi velint discedere? quod omnem est amovendis & necessitatem. Lastly, (as to punishing of Hereticks with death) our Saviour seems to resolve the case (in express terms) that they ought not so to suffer death, though they were Hereticks. It is in the Parable of the (a) Tares, where he tells the servants, that they must suffer the tares to grow with the wheat (Hereticks with (b) Catholics) till the Harvest (the (c) end of the world) and he gives the reason of it, Lest the wheat be endangered by the extirpation of the tares. How far the Romish Inquisitors, (and others who punish Hereticks with death) fulfill or follow this advice, let the world

Chrysost. in
Joh. 6. 67.
Idem habet
Cyprian.
Epist. 55.

(a) Mat. 13.
28, 29.

(b) Vers. 38.
(c) Vers. 39.

judg. Sure I am, this precept,
 [Let them grow together till the har-
 vest] and their practice, are con-
 tradictory. He that consumes He-
 reticks with fire and faggot, does
 not let them grow and continue
 with Catholicks; Unless an abso-
 lute eradication of the Tares be a
 continuation of them with the
 Wheat, which would be an expo-
 sition like that in the Gloss of the
 Canon-Law (d) Statuimus, (i.e.)
abrogamus. When Theophylact had
 told us that by Tares, Hereticks
 were meant, he adds, αἱρετικοὶ
 ὑπομένετε, &c. *Quæ permittuntur esse*
usque in consummationem sæculi: nam
si exscinderemus & occideremus Hære-
ticos, seditiones fierent & pugnae, &
forte etiam multi fidelium in seditioni-
bus perirent, &c.

(d) Glossa ad
 Cap. Statui-
 mus 4. Di-
 stinct. 4. apud
 Gratianum.

Theophylact. in
 Mat. 13. pag.
 77. A. B.

Reas. 3.

3. Such compelling punish-
 ments and coercion is not, cannot
 be a fit and congruous means to
 work

work faith and true Religion in
 erring persons. That *faith comes*
by hearing we read and know, but
 that men are or can be beaten into
 a belief of Truth we read not.
Nova lex se non vindicat ultore gladio,
 (saith Tertullian) and the Fathers in
 the Council of Toledo, (b) *Statuit*
sancta Synodus nemini ad credendum
vim inferre. And hence Gratian in-
 fers, (c) *Ergo non vi, sed liberâ ar-*
bitrii facultate ut convertantur, sua-
dendi sunt, non impellendi. Admonen-
di sunt, non cogendi, (saith the *
 Gloss there) to beget faith, *Argu-*
mento opus est, non baculo. Bonds
 and Imprisonment may captivate
 the body, but not the understand-
 ing; Fire and Faggot may con-
 sume, but not convert an Here-
 tick. Religion is seated in the Un-
 derstanding and Will, things un-
 capable of force, or coaction. Plun-
 derings, Sequestrations and Impri-
 sonments,

(b) Concil.
 Toletanum
 4. cap. 5.

(c) Gratian.
 cap. de Jud.
 5. Dist. 45.

* Glossa ad
 dictum cap.
 5. de Jud.
 Dist. 45.

sonments may beget an outward compliance, and hypocrisie, not true and unfeigned Piety. To put me in Prison is a poor argument to prove that I am in an error, and we may justly suspect he wants better, who useth that.

By such means men are rather confirmed in their opinions than confuted, as is evident in the Christians of the Primitive times, when Christianity thrived, and Christians were multiplied by persecution; so that the Martyring many made more. The Church (in this) like old *Rome* in the Poet :

*Per damna, per cædes ab ipso
Ducit opes, animumque ferro.*

He that suffers persecution, and boldly dies for his Religion and Opinions, (be they what they will, true or false) is (by his party) esteemed a Martyr, not a Malefactor;

lesactor ; and such suffering is so far from a confutation, that it is indeed a great confirmation of them in their opinions ; *Crescit adversis fides*, and a motive to make others imbrace them. The Massacre in France made more Protestants in one night , than all Calvin's Works have done since their first publication. And Erasmus observes, that a Carmelite Frier (who was imployed to inquire after, and punish Hereticks) did by his Cruelty and Severities, increase the number of those he persecuted , *Ubiunq; sevritiam exercuit Carmelita* (saith Erasmus) *ibi diceres factam fuisse Hereseos sementem*. So disproportionable was the means he used to the end he aimed at, that whiles he murdered , he multiplied Hereticks, and made more , even by those Mediums which he used to

leave none. And as it was then, so it may be still ; a prudent Toleration may prove a far more effectual means for the conversion of erring Christians, than the Severities of a Persecution.

Reas. 4.
 Grotius de
 Jure Belli, l. 2.
 cap. 20. Sect.
 9. Salmanus
 de Arianis.
Hæretici sunt,
sed non scientes ; apud nos
sunt hæretici,
apud se non
sunt ; veritas
apud nos est,
sed illi apud se
esse præsumunt.
Errant ergo,
sed bono animo
errant ; non
odio, sed affe-
ctus Dei hono-
rare se domi-
nium creden-
tes. Et quali-
ter pro hoc
ipso falsa opini-
onis errore in
die judicii Pæ-
niendi sunt æ-
quo potest scire
nisi judex, &c.

4. In all just punishments, as the best Lawyers truly tell us, there must be two things : 1. *Cognitio culpæ.* 2. *Æstimatio pænæ*, the crime to be punished, (together with the magnitude and measure of it, the degrees of the malice of it in it self, and the mischief it does to others) must of necessity be certainly known, else it cannot justly be punished, for the justice of punishments consisting in a proportion between the crime and punishment, he that would justly proportion this to that, must first know the crime, and the measure of the malice contained in it, the mischief done by it, else 'tis impos-

impossible he should proportion a just punishment for it. Now I conceive it very difficult, if not impossible, for any man certainly to know how far Erroneous opinions in Religion, or Heresies, (as they call them) are sinful. For,

1. No Heresie, or erroneous opinion can be sinful, unless it be voluntary. That of Saint *Augustine*, is an universally and justly received principle; *Peccatum non est peccatum, nisi sit voluntarium*: There is no malice in the mind or will unless it be voluntary. But now how far the Errors of *Titus* and *Sempronius* are voluntary, whether they proceed from weakness or wilfulness; and what degree of weakness or wilfulness they have, none (I believe) does, or can know (without Divine Revelation) but he that knows the heart, and therefore none (but he) can justly punish

* Seneca de
Beneficiis,
l. 3. cap. 7.

nish such Errors, because not knowingly ; and this is the reason which * Seneca gives, why Ingratitude was not punishable by any Law in his time, *Quia difficilis erat Incertæ rei æstimatio*, it was (to them) so difficult, to know the measure and degrees of Ingratitude, that they did not dare to punish it, but left it, *Odia hominum & vindictæ Deorum*, who only knew the measure of the fault, and so the means justly to punish it, for although (in *Thesi*) all men by the light of Natural Reason knew, and confest *Ingratitude* to be a fault, yet (in *Hypothesi*) how far this, or that man (in particular) is guilty of that fault, is very difficult, if not impossible to be known by any, save him who knows the heart.

2. It is a known and received truth by all Lawyers and Divines generally, that no *positive* Law of God

God or man does, or can bind us, without a sufficient promulgation; such a sufficient Promulgation being necessary to the obligation of all positive Laws. But now, when the positive truths of the Gospel are sufficiently revealed and promulgated to *Titius* and *Sempronius* (to this and that particular person) is difficult, if not impossible for any man to know, unless he could know the divers abilities and capacities of those persons to whom those Truths are published. For as those Pagans to whom the Gospel was never revealed (as to many Nations it never was) are no way under the obligation of it, nor any way liable to sin, or punishment for not believing it (whence that saying of *Augustine* speaking of the Gentiles, *Veniam habebunt propter Infidelitatem, damnabuntur propter peccata*

Augustinus.

cata contra naturam. So amongst those to whom it has been revealed, there is a great difference in respect of the sufficiency or insufficiency of its promulgation; for it may be a sufficient promulgation to one, which (their capacities considered) is not to another, and so the error of one be a crime, when the other, tho holding the same opinion, is innocent. And therefore to persecute and punish men with loss of Livelihood, Liberty, or Life, for Opinions in Religion only (when we cannot know whether, or how far they are crimes;) to consume dissenting Brethren with Fire and Faggot, to make a Coal of a Christian, and certainly kill him for an uncertain crime, this is that which none should, and it were to be wished that no Christian wo'd do. It is (to this purpose) well observed by * *Grotius*, that in the

* *Grotius* de
Jure Belli,
lib. 2. cap. 20.
Sect. 50.

the Jewish Religion) which was established (in some cases) by Penal Sanctions, and Coactive punishments) although the Sadduces deny'd the Resurrection, and (in that) were judged to be (as indeed they were) erroneous, yet they were not punished for it. *Nunquam eos pœnis subdiderunt* (saith Grotius) and he conceives the reason to be that we now speak of, (that is, want of clear revelation, or sufficient promulgation) *Dogma resurrectionis verissimum illud quidem, sed in lege Judaicâ non nisi obscure, & sub verborum aut rerum involucris traditum.* And on this ground I think many thousand poor Souls in Spain and Italy (who by Priests, and Parents, and Governours, are kept in an invincible ignorance of the Gospel) innocently disbelieve, or are ignorant of many Gospel-truths, which to us (who have a greater

greater measure of Revelation)
would be Criminal and dam-
nable.

Reas. 5.

* See many
Reasons for
this in the
Lord Faulk-
land's Reply,
pag. 224, 225,
&c.

5. Upon this ground, I am ab-
solutely against punishing * He-
reticks with *death*, it being uncer-
tain who are really such : For to
kill a man for an Heretick, before
I can tell whether he be so or no,
is certainly a temerarious act,
which may argue some zeal, but
little Justice in him that does it.
For further evidencing of this, I
say,

† Vid. *August.*
de Hæresibus
in Præfat.
pag. 32. Edit.
in 8o.

1. That 'tis not yet † agreed a-
mongst Divines who are *formally*
Hereticks, and to agree of the pu-
nishment (and that Capital) be-
fore there be a *constat* for the crime,
is a strange piece of justice.

* *Aquin. 2. 2.*
Quest. 11.
Art. 2. &
Commentat.
ejus ibidem.
Filiucius. Tra-
ctat. 22. cap. 6.
Sect. 15. 2. San.
lib. 2. cap. 7.
Azorius. lib. 8.
cap. 9, &c.

2. * Some would have the for-
mality of Heresie to consist in *per-*
tinacy, or *contumacy*, out of St. *Au-*
gustine, who tells us, *Qui in Ecclesiâ*

præsum

pravum quod sapiunt, si correcti non sapiunt, sed resistunt Contumaciter Hæretici sunt. So St. ^{*} Augustine, and Justinian to the same effect, though in other words, † *Hæresis est obstinatio animi dementia.* Now Seeing pertinacy is an internal thing, and such a *διαθεσις* and constitution of the Soul, as none but God does, or can know; it were but just to stay the execution of Hereticks, till they be certain what is Heresie. *Constet de culpâ priusquam irrogetur pœna.*

^{*} Augustin. de Civitat. Dei, lib. 8. cap. 51. & de Origine Animæ, cap. 15.
† L. Nullus, 2. Cod. Just. de Summa Trinitat. vid. Grotium in Tit. 3. 10.

3. The Greek (a) Scholia (on that of Tit. 3. 10.) require to an Heretick that he be *αὐτοκατακριτός, ἀνίατος, ἀνῆλπιτος*, self-condemned, incurable, incorrigible; but none of these are within the compass of humane cognizance; for who can tell what Heretick is self-condemned, incorrigible, or incurable? and if they cannot, why should they inflict a certain punish-

(a) Vid. Theophyl. & Oecumenium in Tit. 3. 10:

punishment for an uncertain crime? Certainly all sober men will and must confess, that *Auto-catacrisie*, *Incurability*, and *Incorrigibility* depend on many spiritual and internal Circumstances, which are visible to no eye but that of Heaven. And therefore the punishment of those Crimes should be left to that Judge, who alone can certainly know them. *Si judicas, cognosce.*

* *Aguin. 2. 22*
Quest. ii. Art.
2. in Concluf.
Ita Filiucius,
Azorius, Na-
varzus, alii,
&c.

4. They * say an Heresie must be *contra Articulos fidei*. Now 'tis not agreed which, and how many are such, and what makes them so; those being Articles of Faith to some, which are not so to others. Certainly it is but equal that men should not be hanged for Heresie against the Articles of our Faith, till it be resolved and known what Propositions are such. If a man commit Murder, Adulte-

Adultery, Theft, Perjury, if he be a Traytor to his Prince, or a Robber on the High-ways, all men generally agree in this, that these are crimes, and accordingly punish them. But 'tis not so with Heresie and Opinions in Religion, each party believes his own Positions to be true, and condemns his adversary; so that what is Heresie to one, is Catholick verity to another. In short, it were to be wish'd, that men would not be so fierce to punish Heresie, till they be more certainly informed, and assured what it is.

See the Lord
Viscount
Faulkland's
Reply in de-
fence of his
Tract of In-
fallibility, pag.
217, 218, 219.
&c. That
'tis not law-
ful to put
Hereticks to
death.

But if Heresie cannot be cer-
tainly known, why doth the Apo-
stle say, *Hereticum evita*. How
can we avoid what we cannot cer-
tainly know? why do we and all
Christians punish Hereticks with
Ecclesiastical Censures, *Suspension*,
Penance, *Excommunication*, &c. Can

Dub.

we justly punish that crime (with any punishment Ecclesiastical or Civil) which we cannot certainly know?

Answer.

To this Discourse (in short) I say, 1. That the old Monk mistook the Apostles meaning much, when he would have us believe that the Apostle there commands to punish the Heretick with death, and reads the Text thus, *Hereticus de Vitâ*, (i.e.) *de vitâ tolle*. He was beholden to the Latin Translation for that Gloss (for sure he was not guilty of much Greek, though the *Latin* was little beholding to him for mangling it so barbarously.

(a) Glossæ veteres in calce
Cyrilli,
πεγαίσματα
Evita.

(b) Grotius in
Tit. 3. 10. vid.
Euseb. Hist.
Ecclesi. lib. 4.
cap. 13. Lat.
14. Gr. pag.
24. A. B.

2. He saith only *παραιτῆς ἀποσπῆ-
φε*, (a) *evita*, turn away from such a
one. Such are to be admonished
first, (Mat. 17. 16, 17.) and then
(as (b) Grotius well observes) *Id si
non profit, abruptenda est cum eis om-
nis*

nis familiarior consuetudo. Here is nothing of punishment, 'tis only *Evita*, not *Excommunicata*.

3. And if you ask how I can avoid an Heretick, if I cannot certainly know what Heresie is? I answer (and I am beholden to (a) *Hierome*, (b) *Grotius*, and (c) *Ju- stellus* for it) that such an Heretick as the Apostle here speaks of might be known well enough, and punished too.

4. That this may appear, I say,

1. That the word *αἵρεσις* here, is (as all know) *vox mediae significati- onis*, sometimes taken in a good, sometimes in a bad sense. The se-

veral Sects of Philosophers were anciently called *αἵρεσις φιλοσοφίης*,

(d) *Hippobotus* writ a Book, *de se- ctis seu Haresibus Philosophorum*, ἡ ἑνεα φων αἵρεσις εἶναι, Στοιχὴ, περιπα- τητικὴ, &c. So Christianity is call- ed (e) *Ναζαρεῶν αἵρεσις*, by St. Luke.

(a) *Hierom.* in Tit. 3. 10. pag. 209.

(b) *Grotius* in Tit. 3. 10.

(c) *Christ. Ju- stellus* in Cod. Can. Ecclef. Univers pag. 213. ad Can. 12. & ad Cod. Can. Ecclef. Africanæ, pag. 103.

(d) *Diogenes Laert.* de vitis Philosophi in Proemio pag. 3. Vid. Hieron. in Tit. 3. 10 pag. 209.

(e) *Act.* 24. 5. & 14 *Act.* 28. 22, &c. Vid. *Euseb.* Hist. 1. 8. c. 29. pag. 253. E.

Act. 26. 5.

Tit. 3. 10.

And ἀρεβερᾶν αἵρεσις (in the same Luke) signifies the Heresie or Sect of the Pharisees. On the other side, sometimes it is taken in the worse sense. See Gal. 5. 20. (Heresies are reckoned amongst the works of the flesh) and in this of Titus also. 2. Concerning Heresie in the worse sense, I believe it true which Grotius observes, *Ubi Hæresis in malam partem sumitur, significat idem quod σχίσμα, nisi quod illa generalitas σχίσματος, voce αἵρεσεως limitatur ad eas partes quæ fiunt ex opinionum diversitate. Est ergo Hæreticus hîc is, qui per opinionem de Ecclesiâ partes facit. He is an Heretick here in the Apostles sense, who not only imbraces and maintains an erroneous opinion, but makes a schism in the Church by separating himself from the Communion, and drawing others after him, and so disturbs the publick peace.* This

is the opinion of Grotius, and Justellus, and (long before them) of St. Hierome, *Inter Hæresin & Schisma hoc interesse arbitramur, quod Hæresis perversum Dogma habet, Schisma propter Episcopalem Dissensionem, ab Ecclesiâ Pariter separet. Quod quidem in principio aliquâ ex parte intelligi potest diversum; cæterum nullum Schisma non sibi aliquam confingit Hæresin, ut rectè ab Ecclesiâ recessisse videatur.* In his opinion Heresie and Schism do both agree in this, that they make a rent in the Church (*Pariter separant*) and so break the bond of Peace, and Ecclesiastical Union. Whence it is, that the Apostle calls him *αὐτοῦ κατακεραυνωτός*, self-condemned, so we render it, amiss I believe, for the Apostle speaks of such an *αὐτοῦ κατακεραυνωτός*, as men may know, see, and be sensible of; *εἰδὼς ὅτι ἐξ ἐστραπτῆς ὡς αὐτοῦ κατακεραυνωτός*, (i. e.) knowing that such an Heretick is subverted, be-

Hieronymus in
Tit. 3. 10.
pag. 209. C.

ing *αὐτοκατάκριτος*, not self-condemned, for who is so, none does or can know ; It being impossible for any man to know when an Heretick maintains his Heresie against the light of his *own* Conscience, none being able to know that, save he who knows the heart : And therefore I conceive that *αὐτοκατάκριτος*, here should be rendered, *à seipso separatus*, rather than *à seipso condemnatus*. One that broaches an error, and separates from the Church. This self-separation may be known, but self-condemnation cannot, and therefore the Apostle speaks not of this, but that. And I am the rather induced to be of this opinion :

1. Because the word will very well bear this signification, for *κρίνω* (whence *αὐτοκατάκριτος* comes) originally and properly signifies *seccerno*, *separo*, as well as *judico* :
And

And (if *Stephanus* mistake not) to separate, is the prime signification of it.

2. Because I find *Justellus*, and *Grotius* of the same opinion. *Grotius* on these words, Μετὰ μίαν καὶ ἀνέγκαν ὑποστασιν παραιτῶ; saith thus, *Non dicit Excommunicata, nam ipsi ultro Communionem deserunt.* And *St. Hierome* more fully, *Propterea à seipso dicitur damnatus, quia fornicator, homicida, adulter, & cætera vitia, per sacerdotes de Ecclesia pelluntur: Hæretici autem in semetipsos sententiam ferunt, suo arbitrio de Ecclesia recedentes, &c.* So that (in *St. Hierom's* opinion) the Heretick *Saint Paul* speaks of, is such a one, who (besides his Erroneous opinion) is Schismatical, and not only makes a separation from the Church himself, but seduces others, to the disturbance of the publick peace; which crime is visible, and confes-

Christoph. Justellus & Grotius locis supra citatis.

Hieronimus in Tit. 3. 10. pag. 209. Col. 2. C.

sedly punishable. However, 'tis certain, we may know, and avoid all familiarity with such a person, which is all which that Apostolical Injunction [*Hæreticum evita*] signifies. And so much for that passage in St. Paul.

3. For the *practice* of the Primitive Church in punishing those they call'd Hereticks with Excommunications, I confess 'tis true, they did so. But then, 1. It will not hence follow, they did well and justly in doing so. *A facto ad jus, non sequitur argumentum*. We cannot infer, *Illos justè fecisse, ex eo quod fecerint*. Nay he that reads the ancient Church-story, will find that even those ancient Christian Bishops (though otherwise good men) were oft times too precipitate and passionately hot, and fierce against their Brethren, and too free of their Anathematismes and

and Excommunications (although they were not then come to the now practised Popish cruelty of confuting Hereticks with fire and faggot.) As is evident in that famous story of Pope *Victor* (to omit others) Excommunicating the *African* Bishops for their Observation of *Easter*, though no Law of God or man obliged them to keep it otherwise than they then did. 2. Yet I grant, that the *Church* anciently did, and still justly may punish an erring person with Excommunication (altho they cannot be certain how far, and in what measure such persons err culpably;) and yet neither Church or State can justly punish such persons with loss of Livelihood, Liberty, or Life. So (I suppose) an *Arian*, or one who denies the Resurrection (though otherwise peaceable, neither separating himself, nor factiously seducing others)

Euseb. Hist.
Ecclef. lib.

others) may justly be Excommunicated by the Church, because he does not keep the Conditions on which he had the Christian Communion. He that has the grant of any Communion (Sacred or Civil) upon Conditions, cannot be Excommunicated justly while he keeps those Conditions, but if he do not, then (*conditione non præstitâ*) he may be justly Excommunicate. Now Christians anciently, (and in ours, and all Churches) were received into the Communion of the Church, on Condition of believing the Creed (or Faith into which they were Baptized.) The Priest at Baptism asked, *Dost thou believe in God the Father Almighty? &c.* The party Baptized answered (by himself, if he were of age, by his Sureties, if not) *All this I stedfastly believe.* Then the Priest demands further,

Wilt

Wilt thou be Baptized into this Faith?
 He answers, *That is my desire, &c.*
 Upon these Conditions he was
 received into the Church, and ad-
 mitted into the Christian Com-
 munion. Now if after Baptism,
 and this promise, he deny any of
 those Fundamental Articles into
 the belief of which he was Bap-
 tized (though otherwise he lived
 never so peaceably) he might just-
 ly be Excommunicated by the
 Church. 'Tis a good and true Rule
 in Morality (and Divinity too)
Volenti non fit injuria, he desired,
 and had the Communion on that
 Condition; and when he rejects,
 and does not make good that con-
 dition, the Church may justly eject
 him by Excommunication, (tho
 they cannot distinctly know the
 measure and degrees of the malice
 that is in such error, it being im-
 possible for any man certainly to
 know

know whether he err out of weakness and infirmity, or malice and obstinacy.) And further, every such person may be call'd *αὐτοκατακρίετος*, (as the * Apostle here, † *Irenæus* and others after him call all Hereticks) not because they maintain an error against their Conscience, (for certainly many do not, and when any do, none can possibly know, but he who knows the heart) but because (as * *Lyranus* tells us) *Fidem quam in baptismo recepit ut veram, nunc condemnat ut falsam.* He condemns that Faith now, (and so himself) which before he professed as true. So that he is said to condemn himself, *Non respectu judicis interni*, (for he may at both those times, think he is in the right) but *respectu professionis, & facti externi*; he professes that as true at one time, which he himself condemns (as false)

* Tit. 3. 10.

† Iren. adversus Hæreses, lib. 1. cap. pag. 103. Eras. Cod. Can. Eccl. Universal. Can. 144.

* Nic. de Lyr. in Tit. 3. 10.

false) at another. And so the same person at several times, approving and condemning the same Doctrine, may (properly enough) be said to condemn himself, seeing he now disapproves and condemns what before he approved. Lastly, (which is no little prejudice against punishing for Opinions) in the Primitive and purer times of Christianity, we find no persecution for Religion (except by Pagans.) The *Arians* (amongst the Professors of Christianity) were the first who used it. So * *Athanasius* tells us, and † *Grotius* observes it out of him, *In Arianam hæresin acriter invehitur Athanasius, quod prima in contradicentes usa esset judicium potestate, & quos non potuit verbis inducere, eos vi, plagis, verberibusq; ad se pertrahere anniteretur.* Such force and compulsion may be means for *Mahomet*, for a Pagan

or

* Athanas.
Ep ad Solita-
riam Vitam
agentes O-
perum Tom.
1.

† Hu. Grotius
de Jure Belli,
lib. 2. cap. 20.
Sect. ult. pag.
347. vide
Hilarium O-
rat. ad Con-
stantium.

or *Arian* to promote Infidelity and Heresie, but not for a Christian.

Nec tali auxilio, nec defensoribus istis Christus eget.

After them the *Donatists* (equally guilty of Heresie and cruelty) persecuted the good Christians: And *Optatus* (for this very thing) denies them to be true Members of Christ's Church, *Neque enim Ecclesia dici potest, quæ cruentis morsibus pascitur, & sanctorum sanguine & carnibus opimatur, &c.* For though these be the words of *Parmenian* the *Donatist*, objecting to the Orthodox that they persecuted the *Donatists*, and therefore were not the true Church: Yet *Optatus* grants his Position to be true, that, *Ecclesia dici non potest quæ cruentis morsibus pascitur, &c.* And retorts the argument against them, telling *Parmenian*:

1. That the Orthodox and true Church

Optat. Mi-
levit. lib. 2.
pag. 51. Edit.
Casauboni.

Church persecuted none : * *Doce aliquem nostrum* (saith Optatus) *cuiquam insidiatum esse : quem à nobis persecutum esse, aut dicere possis, aut probare ?* the Orthodox Christians did no such thing, nor any way approved it then.

* Optatus
ibid. lib. 2.
pag. 54

2. But the *Donatists* did : † *De sedibus suis multos fecistis extorres, cum conductâ manu venientes, Basilicas invasistis, multi ex numero vestro, per loca plurima cruentas operati sunt cædes, & tam atroces, ut de talibus factis, ab illius temporis Judicibus relatio mitteretur, &c.*

† Optatus
ibid. & pag.
55, 56. vide
constit. Ho-
norii & The-
odol. Aug. ad
Curtium P.
P. in Appen.
Cod. Theod.
per. Jac. Sir-
mondum,
pag. 31.
† Donatist.
species. vid.

Thus the *Arians* and *Donatists*, and † *Circumcellians* (the worst sort of *Donatists*) and after them the Church of Rome hath (of all others) been most guilty of this cruelty ; using, when they wanted better reasons, force, fire and fagot, to consume whom they could not rationally convince. And in-

Optat & Au-
gust. de Hæ-
res. cap. 69.
& Notas L.
Danzii Sect. 3.
Pag. 212.
*Genus homi-
num agreste,
& famosissime
audacie, in
alios immania
facinora per-
petrantes.* Au-
gust. ibid.
Pag. 208.

deed

deed those who are so fierce for persecution for Religion, have no better examples to follow than Pagans (in their Persecution of Christians) or *Mahomet* (establishing the *Alcoran* by the Sword) or *Arians*, *Donatists* and *Circumcellians*. Now how far it may be safe or honourable for any to follow such examples, let sober men judg. Sure I am, neither our Saviour nor his Apostles, nor the Primitive and Orthodox Christians for several ages, either used or commended force and coercive punishments, as a congruous means to propagate the Gospel where it was not, or confirm it where it was. He that reads *Justine Martyr*, *Athenagoras*; *Tertullian*, *Arnobius*, *Minutius Felix*, *Lactantius*, &c. or indeed any Ecclesiastical Author for 300 years after Christ, will find *Grotius* his Observation to be true, * *Quod per-*
petuè

* *Grotius* in
Luc. 14. 23.
Pag 748.

petuò afferunt. Neminem ob fidei professionem esse cogendum. The ancient saying is still true, *Religionis non est Religionem Cogere, quæ sponte suscipi debet, non vi. Suaderi potest, cogi non potest.* The internal Acts of the Soul (in which all true Religion originally consists, and without which no external Acts of the body are capable of any Religion) cannot be compell'd, nor is there any possibility that they should be capable of compulsion. I confess the Body may be compell'd, the Feet to go to Church, the Ear to hear Prayers, Sermons, Disputations, the Hand to subscribe Articles and Canons, but all this (if the Heart and Hand do not go together) is so far from true Religion and Sincerity, that it is downright hypocrisie. Whence it was that St. *Augustine* (even when he was of opinion that in some cases,

Tertullianus
ad Scapulam.

* August. Ep.
50. ad Boni-
facium, pag.
219.

coactive punishments might be used) thought it best, * *Quod ad Catholicam veritatem cogeretur nemo, sed eam qui sine formidine vellet sequeretur, ne falsos & simulatores Catholicos haberemus.* Athenagoras pleading against Persecution for Religion, to *M. Aurelius Antoninus*, tells him, and us, *καὶ ἐν λόγῳ*, &c.

† Athenag. in
Legatione
pro Christianis.

Et uno verbo, quantum ad Gentes & populos, sacrificia peragunt quæ volunt homines & mysteria. And then adds, *καὶ ταῖς πάντων ἐπιτρέπετε καὶ ὑμεῖς, καὶ δι νόμῳ*, &c. *Et ista omnia conceditis & vos & leges.* Rome gave always Liberty of Religion to those Nations she subdued, they might serve their own Gods, so they payed tribute, and without sedition served her too. *Fides voluntatis est, non necessitatis*, was the saying of *St. Ambrose*, and still true. Our Saviour is Captain of our Salvation, (Christianity is a Spiritual Militia,

litia, and the Church militant, an Army with Banners, Christians Soldiers, but *Voluntiers*, not *press'd* men.) * *Nec Christum invitis, servis aut mancipiis, sed liberis regnaturum, Psaltes † olim dixit. Populus tuus Spontaneus in die fortitudinis, seu Victoriae tuae.* The Original (if rendered *ad verbum*) sounds thus, *Populus tuus Spontaneitatum.* A people which must come without compulsion: Christ and his Apostles never inflicted or threatned any temporal punishments here, but eternal hereafter. *Qui non credit, condemnabitur.* Our Saviour's Kingdom is Spiritual, and the means to preserve, increase, and propagate it, are so too. Fire and Faggot, Chains and Imprisonments are not amongst Evangelical means to make or confirm Christians. Those were things Christians were patiently to suffer themselves, not to

* Vid Joseph. Castim in Manuduct. ad Viam Pacis, pag. 40. Eleuth. 1650.
† Psal. 110.

inflict on others. The Gentiles never were compell'd, but freely came to Baptism, *Sacro Christianæ militiæ Sacramento liberè obligati*, (as a good Author tells me;) to be Christians, is to be in Covenant with Christ, which cannot be compell'd; 'tis essentially *consensus mutuus*, and where such free consent is wanting, there is no Covenant, or real and true Christianity. It is *Tertullian* who tells us, *Hoc ad Irreligiositatis elogium concurrat, ut non liceat mihi colere quem velim, sed cogar credere quem Nolim*. It seems to him *irreligious* to compell Religion. *Piæ religionis est, non cõgere sed suadere*, (saith *Athanasius*.) And again, *Dominus non cogens, sed libertatem suam voluntati permittens; dicebat quidem vulgo omnibus, Si quis vult venire post me: Apostolis vero, Numquid & vos abire vultis?* And *Chrysostome* (on the same place of *John*)

Athan. Epist.
ad Solit. vi-
tam agentes.

Chrysost. in
Johan. cap.

ἔργον

ἐρωτᾷ λέγων, &c. Interrogat, an & ipsi velint discedere? quod omnem est amoventis vim ac necessitatem. It is an excellent passage in Hilary to this purpose, Intelligit singularis sapientia tua, non decere, non oportere cogi, & compelli. invitos ac repugnantes, &c. Idcirco laboratis, ut omnes quibus imperatis dulcissimâ libertate potantur. Nec alia ratione quæ turbata sunt componi, quæ divulsa sunt coerceri possunt, nisi unusquisque nulla servitutis necessitate adstrictus, integrum habeat vivendi arbitrium. And again, Permittat lenitas tua populis, ut quos Voluerint, quos Elegerint audiant Docentes, & divina Mysteriorum solennia concelebrent, &c. And a little after, Deus cognitionem sui Docuit potius, quàm Exegit, coactam confitendi se aspernatus est voluntatem. Deus universitatis est, obsequio non eget necessario, non requirit coactam confessionem; non fallendus est, non promerendus,

Hilarius ad
Constant. Im-
peratorem.

Lactant. lib. 1.
cap. 20.

nolit nisi Volentem recipere, nisi orantem audire, nisi profitentem signare. Lactantius thus, *Defendenda Religio non occidendo, sed moriendo, non savi-tiâ sed patientiâ; illa enim Malorum sunt, hæc bonorum; & necesse est bonum in Religione versari, non malum. Nam si sanguine, si tormentis, si malo Religionem defendere velis, jam non defendetur illa, sed Polluetur & violabitur. Nihil enim est tam voluntarium quàm Religio.* And the same Lactantius elsewhere: “Non

Lactant. lib. 6.
cap. 7. & cap.
14.

“expetimus ut Deum nostrum
“velit nolit, colat aliquis invitus,
“nec si non coluerit irascimur.
“Quis imponit mihi *Necessitatem*
“vel colendi quod *Nolim*, vel
“quod *Velim* non colendi?

St. Augustine was at first against all Persecution for Religion, and would not have the Emperor solicited to punish the *Donatists* with Secular and Temporal punishments.

ments. At last (as * he confesseth) he was of another opinion, yet even then he was against punishing any (even the worst) Hereticks with death: "Ita enim

* Aug. Epist. 50 ad Bonifac. Operum Tom. 2. pag. 219. C. Edit. Frob.

"lex fuerat promulgata († saith
"he) ut tantæ immanitatis Hæresis Donatistarum (cui crudelius
"parci videbatur, quàm ipsa sa-
"viebat) non tantum violenta esse,
"sed omnino non fineretur esse
"impunè, non tamen supplicio
"capitali (propter servandam eti-
"am circa indignos mansuetudi-
"nem Christianam) sed pecunia-
"riis damnis, &c. There is in *

† August ibid. Col. 220. B.

Eusebius, an Edict of *Constantine* and *Licinius*, which gives a Toleration to all Religions, *ἵνα πάντες δύνανται*

* Euseb. Hist. Eccl. lib. 10. cap. 5. pag. 287, 288. Edit. Gr. Lat.

ἐν τοῖς χριστιανοῖς, &c. "Ut tum
"Christianis, tum aliis omnibus
"liberam optionem omnino da-
"remus, eam Religionem sequen-
"di, quam ipsi in animos indu-

“cerent. And again, ὁρδοτάτω λο-
 γισμῶ ἐδογματίσαμεν, &c. “*Consilio*
 “*rectissimo* decrevimus, ut nemini
 “prorsus libertas negetur Christi-
 “anorum cultum imitandi, &
 “Cuiq; detur copia, suam men-
 “tem ei Religioni addicendi,
 “quam ipse sibi maximè conve-
 “nire censuerit. And he gives the
 reason of this Indulgence, ἕπερ ἀπο-
 λυτῶς τῇ ἡσυχίᾳ, &c. “*Quia* nostro-
 “rum temporum tranquillitati &
 “quieti revera accommodatum
 “est, ut quisque facultatem ha-
 “beat deligendi eam in Deo co-
 “lendo rationem, quæ sibi maxi-
 “mè placuerit, hocque à nobis
 “factum, ut nullius Religionis
 “authoritas à nobis ulla ex
 “parte imminui videatur. Af-
 terwards such Toleration was
 not granted, but (as we see
 in the Imperial Laws) some-
 times more or less according to
 the

the * Constitution of the Emperors, and the fierceness and importunity of the Bishops.

* Vid. Justin. Cod. de summa Trinit. & fide Catholica l. Cunctos & leg.

nullus. 2. & Cod. de Hæreticis & Manichæis, & Cod. Theodos. lib. 16. Tit. 5. de Hæreticis, & Constitut. Theod. & Valent. ad Amatum P. PR. Galliar. in Append. Cod. Theodosiani per Ja. Sirmondum pag. 14. qua Hæretici omnes à Galliis exulabant. Et Constitut. Honorii & Theodosii, ibid. pag. 31. & eorundem Impp. Constitutionem ibid. pag. 38. Et Gratianum Distinct. 45. cap. 5. de Judæis. Vide etiam Constit. Impp. Arcadii, Honorii & Theodos. A.A.A. Hadriano P. PR. in Append. Cod. Theodos. l. 21. p. 59. Constitutio sic habet: *Adversarios Catholica fidei Extirpare hujus Decreti auctoritate prospeximus, &c.* Et paulo post, *Quare hac lege sancimus, ut quisquis fuerit rebaptizasse detectus, Judici qui Provincia præsidet offeratur, ut facultatum omnium publicatione mulctatus inopia pœnam, qua in perpetuum adficiatur, expendat.*

But enough (if not too much) of this, and therefore *manum de Tabula*: He that desires more, either sayings of Fathers or Imperial Edicts, or Constitutions of particular Churches and Nations, concerning Persecution or Toleration of several Religions, may have them Collected to his Hand by many † Authors. *Qui plura vellet, illos videat.*

† Grotius de Jure Belli, l. 2. c. 20. Sect. 48, 49. &c. Wilhelmus Zepherus in Explanat. Leg. Mosaic. lib. 4. cap. 3. de Pseudo-Prophetis, Jos. Castim in Manu duct. ad viam Pacis, pag. 25. usq; ad p. 108, &c.

The Case of a Toleration

Quer. 1. Whether he that would give a Toleration to several Religions, should not (in prudence and conscience) first know what these Religions are, what Points they hold different from that Established, that so he may knowingly judg how far he may, or may not grant Impunity? For if he Tolerate a Religion before he know it, he Tolerates he knows not what: Which cannot be an act of prudence in any Magistrate. Seeing (in this case) he grants a Toleration to that Religion, which (for ought he knows) he ought not to Tolerate.

Quer. 2. Whether he that does (and justly may) Tolerate a Religion different from that Legally established, and so compells none to be of his Religion, may not yet compell his Subjects to those *Media* (and the use of them) by which they

may be informed of the reasons and truth of his Religion? As (for instance) whether our King, though he should grant a Toleration to Papists, and so no way compell them to be Protestants, may not compel them to come to Sermons, and hear Disputations, by which they may be informed of those Truths we hold, and the Grounds and Reasons of them. (As Parents compell their Children to go to School for Information, though they should not, cannot compell them to an assent, and belief of what they are taught.) Seeing (by the Law of Nature and Scripture) we and all men are bound to *Try all things, and hold fast that which is good*; and so may (by our Lawful Governours) be compell'd to an examination and rational trial of several Religions, though not to the belief of any? Now the reason

son of this difference in this, 1. It is evident (and confessed) that 'tis every man's duty to make such trial of the truth of several Religions, that so he may be of the best Religion by choice, and not only by chance. 2. It is as evident, that the end of Magistracy is to bring all men under their Jurisdiction to do their duty, either by suāsory allurements; or (if that will not do) by compulsory punishments, and so (by consequence) he may compell them to such trial of the truth. 2. But after such trial made (by hearing Sermons and Disputations) the Magistrate cannot tell certainly, when it is their duty (of several Religions) to believe this, or that in particular; for 'tis no man's duty to believe any positive truth of Christian Religion, till it be sufficiently revealed (a sufficient
reve-

revelation of truth being absolutely necessary, and antecedent to an obligation to believe it, and so to the duty of believing) and when that is, the Magistrate cannot certainly know; and therefore he cannot compell any to the belief of these or those opinions (as a part of their duty) seeing he cannot certainly know, whether it be their duty or no.

Sir, These *Adversaria* (tumultuously put together will need your pity and pardon, being neither in a just order or method, nor having that evidence of proof which otherwise they might have had, had either my parts been better, or my time for Meditation more. As they are, you freely have them, and an absolute power (to approve or condemn them) Given you by,

SIR,

*Your most Obliged
humble Servant, &c.*



THE
CASE
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The Case of MURDER.

GEN. ix. 6.

An Objection from the said Text,
That Kings have not power to pardon Murder, Answered.

FOR the clearing and further Evidence of the truth of this Position, [*That Kings and Supreme Powers may in some Cases pardon Murder*] there remains one (and for ought yet appears, but one) Objection to be answered; 'tis grounded on the Law given to Noah after the Flood, and about 796 years before the Mosaical Law, which says, that the Murderer shall surely be put to death: The Law given to Noah,
H was

Object.

Gen. 9. 6.

Numb. 35. 31.

The Case of Murder.

was in these words; He that sheds man's blood, by man shall his blood be shed. Wherein God Almighty appoints death to be the punishment of Murder. Now if it be granted, that the Mosaical Law binds only the Jews, to whom it was given; yet this Law given to Noah, and in him, to all his Posterity; must bind Jews and Gentiles too, who are all equally his Posterity.

Sol. In answer to this Objection, and the reason of it, (which no way proves what is pretended) I say,

1. It is confess'd, that this Law given to Noah, did bind him and all his Posterity. There were three men (and but three) who could make Positive Laws, to bind all the World.

1. Adam. 2. Noah. 3. Our Blessed Saviour. Whatever Laws any of them made, (after sufficient Promulgation) oblig'd the whole World; and

and what Laws God gave to Adam or Noah, all such Laws, (after sufficient Promulgation) oblig'd their Posterity; that is, the whole World; (for as before the Flood, all the men in the World came from Adam; so after the Flood from Noah; and it must be confess'd, that although this Law given to Noah, does not bind many, to whom it was never promulg'd or made known; yet God has sufficiently made it known to all Jews and Christians, in the holy Scriptures; and therefore we must confess our selves under the Obligation of it.

2. It is certain, that this Law given to Noah, was (as all Penal Laws are) a Positive Law; and that all such Laws are capable of Dispensation; and that in several Cases, (without any dispensation) their Obligation ceases: of which more anon.

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3. It

3. It is certain, that by these words, [By man shall his blood be shed] By man there, the Magistrate is meant, who had *Jus Gladii*, Power of Life and Death; and so Authority to condemn and execute a Murderer; which no Private Person had, or could upon any just Grounds pretend to.

4. When it is said, That the Murderers blood shall be shed by man: The Proposition is not *Universal*, that every Murderer shall be put to death. For if Noah, or any Supreme Power had been a Murderer, (as even David the best of Kings was) he could not by this or any other Law be put to death. 1. Because it is evident that the Supreme Power has no Superior, and therefore none to punish him, especially not with death, the greatest Punishment man can suffer. 2. Nor could he do it himself, for although Kings and Supreme

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preme Powers have Authority to take away other mens lives, (when they are Capital Offenders, and do things worthy of death) yet they cannot take away their own; *Ἀυτοκτονία*, or Self-murder, being in no case lawful. 3. And as they could not without sin and great Impiety, kill themselves; so they could not give Commission to any to do it. It being impossible that I should give another Power to do that, which I had no power to do myself.

5. And as this Law extends not to Supreme Powers; whose Blood cannot be shed by man, although man's Blood have been shed by them; so it extends not to all Subjects and Inferior persons, who have Lawful Magistrates. This the infinitely wise and just Lawgiver (God himself) has told us in the Text, That if Exod. 21, 20, 21. a Master had slain his Man-servant, or Maid-servant, and they die immediate-

Joh. 11. 9.

ly under his hand, then he was to be punish'd; but if that Servant lived a day or two, (24 hours, say the Rabbins, the Jews accounting 12. hours for a day) his Master who kill'd him, was not to die. So that, though a Master had shed the blood of his Man-servant or Maid-servant, yet his blood (by this Law given to Noah) could not be shed for it.

Numb 35. 30.
Deut. 17. 6.

6. Other Cases there may be, and are, wherein a man may shed man's blood, and yet his blood may not be shed for it. For instance, The Law required two Witnesses to put any Murderer to death; and therefore if Sempronius had shed Titius his blood, yet if there was but one Witness legally to prove it, Sempronius his blood could not be shed by any man.

By the Premisses I think it is evident, that this Law given to Noah, [He that sheds blood, by man shall

shall his blood be shed] is not so universally obligatory as some may think it is. Seeing there may be many persons and cases, wherein man's blood may be shed, and yet he who did it, cannot be put to death for so doing. The Query then will be, Whether the Supreme Power, who (as to have his blood shed by any man) is not under the Obligation of this Law, may not (in some cases) pardon a person condemn'd for Murder? For a distinct answer to this Query it is to be considered;

1. That it is certain, that this Law given to Noah (nor any Law *de pœnis*) is not a Natural or Moral Law; (all which Laws were ab Origine, at the Creation, writ in the Heart of Adam, and from him in the Hearts of all his Posterity, and their Obligation eternal and indispensable). But it was a positive Law given to Noah 1658. years after the Creation.

The Case of Murder.

2. It is certain, That all such *Positive and Penal Laws*, are capable of *Dispensations*; and many *Cases* may happen, in some times and circumstances, (of which the *Supreme Power* is the only, or (at least) the *Supreme Judge*) wherein the *Obligation* of such *Laws* ceaseth; so that no man is bound to execute or undergo the *Punishments* appointed by those *Laws*. That this may evidently appear I shall give some few *Instances*:

1. It was a *Divine Positive Law*,
 Gen. 17. 14. that all the seed of *Abraham* should be *Circumcised* the eighth day on pain of being cut off from his *People*: And yet the *Obligation* of that *Divine*
 Josh. 5. 5, 7. *Positive Law* ceased, for forty years, while they wander'd in the *Wilderness*; and yet *Moses*, their *Supreme Power*, did neither *Punish* (according to the *Letter of the Law*) nor blame them for it.

2. It

2. It was a Divine Positive Law, that they should keep *the Passover* Exod. 12. 6. on the Fourteenth day of the *first Moneth*; and yet there were several Cases, wherein the Obligation of that Law ceased, so that they did not sin, though they did not that day eat the Passover: For if any one was casually *unclean by touching* Numb. 9: 6, 10. a dead body, or if he were on a journey, &c. the Obligation of that Law ceased, (as to him) and he *sin'd* not though he did not eat the Passover, on the day appointed by the Law.

3. The Sanctification of the Sabbath (as to that particular day) was injoyn'd by a Divine Positive Law; and (by that Law) it was capital to *violate the Sabbath*, or do any of our own Work; the Worship of God Almighty being the proper and only work of that day: And yet it is certain (and on all sides confess'd) that in many Cases the Obligation of that

Exod. 31. 14, 15.

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that Law ceaseth, so that we may lawfully do that which otherwise to the Jews was Capital. If an Enemy invade our Country, or a City be set on fire on the Sabbath, or our Lord's day, we may lawfully take Arms to defend our Country; and (the Church and Divine Service left) make haste and labour hard to quench the fire, and save the City. Now as to the aforementioned Divine Positive Laws, there may be many Cases, wherein their Obligation ceases, so that the Punishment otherwise required by those Laws may lawfully be pardoned. So in this Law given to Noah there have been, and may be several Cases, wherein that Law does not bind *ad Pœnam*, and so the Murderer may lawfully be pardon'd.

3. And it is further to be consider'd, that this Law (*de Homicidio*) given to Noah, does neither expressly say, nor by any good consequence intimate,

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intimate, that the Supreme Power shall not (in any Case) pardon a condemn'd Murderer : It only declares death to be the just reward and punishment of Murder ; but it does not say, that it must necessarily be always executed ; so that no Pardon, in no case is to be admitted.

4. And it is certain, (and in our present case more considerable) That Jacobs two Sons, Simeon and Levi, were guilty of Murder, and yet were pardon'd, notwithstanding the Law given to Noah : Sure it is, that they were neither sentenc'd nor put to death for their Murders ; but long after went down into Egypt with Jacob their Father, and died there. Though they had impiously and abundantly shed Man's blood, yet their blood was not shed for it. Tho Jacob their Father, and Isaac (who was then living) were the Supreme Powers in the then Church of God,
(con-

Gen. 34. 25.
Gen. 49. 6.

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(consisting in the seed of Abraham) and had power to do it. Nor could those Patriarchs (Isaac and Jacob) be ignorant of the Law given to Noah, seeing Noah himself lived till the fifty seventh year of Abraham, and died only forty three years before Isaac's birth. Now, considering the persons of these two great Patriarchs, that they were Prophets, men of exceeding Piety, and beloved of God; we may be sure they would not have transgressed that Law given by God to Noah, if they had believed that the Obligation of it was such as excluded all possibility of Pardon. In short, if those pious Patriarchs might pardon Murder, then, I desire to know why Supreme Princes (in some cases) may not pardon it now?

5. Lastly I ask, Did that Law given to Noah, bind David and the Jews in his time, or did it not? If
not,

not, how comes it to bind us now, above 2700 years after David's death? If it did bind David then; so as no pardon was to be permitted, or granted to a Murderer, it is not probable that David (a Prophet and the best of Kings) would have transgress'd that Divine Law, and pardon'd Absalom. Especially if we consider, that his other known sins (as Murder, Adultery, Numbring the People, &c.) are confess'd by him; and in Scripture mentioned as his sins; but his pardoning Absalom, is nowhere in Scripture confess'd by him, or laid to his charge, as a transgression of any Law. *Sed manum de Tabula.*

I desire you to ask those, who made the former Objection against the King's power of pardoning Murder from the Law given to Noah, and think the Laws given to Noah still Obligatory; How it comes to pass that

Query.

Gen. 9. 4.

Levit. 17. 10.

that in the same place, the *first Law* given to *Noah*, is a *Prohibition* to eat any *Blood* (which is confirm'd by *Moses*, and no where abrogated;) And yet all *Papists* and *Protestants* eat *Blood*, notwithstanding that *Law of God* to *Noah* forbidding it. I desire to know of the *Gentleman* (who made the *Objection*, which I hope I have probably answer'd) why the *second Law* given to *Noah* (*Gen. 9. 6.*) about *Murder*, should be *binding*, and yet the *first Law* (*Gen. 9. 4.*) against eating *Blood*, should not be binding too. He who can and will solve me this doubt, will do me a kindness, which (if any) few can. I am,

Your Faithful Friend and Servant,

T. L.

THE
CASE
OF
Pardoning Murder.



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The CASE of Pardoning MURDER.

*Query. Whether it be lawful for his
Sacred Majesty to Reprive or Par-
don a Person convict, and legally
condemned for Murder.*

My Honour'd Friend,

ALthough I well know, your
Loyalty to be as much, and
your Learning and Knowledg of
the Laws, and their Obligation,
to be more than mine; yet (ac-
cording to your command and my
promise) I have here sent you, a
Compendium and short Ac-
count, of some Discourses I
lately had with some, who seem'd
to doubt, *Whether our Gracious Sove-
raign could reprove or pardon a person*
I legally

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legally condemned for Murder ? For a distinct answer to this Query, I consider,

1. That it is certain, that all we Subjects, are (by the indispensable law of God and Nature) bound, (next to our good God, the great King of Heaven and Earth) to honour and obey our Gracious Sovereign ; and that not only for fear of punishment, but for Conscience sake. So that to do, or speak, or think dishonourably of the Lords Anointed, our King, and to question and deny any of the Rights of his Crown and Privileges, is in all Subjects disloyal and impious. In the Natural Body, if there be any blemish or disease in the head, if it be in any danger from without, all the members of the body (the dictates of Right Reason, and the principles of Nature requiring it) will industriously concur to cover and conceal that blemish,

Prov. 24. 21.

1 Pet. 2. 17.

Rom. 13. 5.

Rom. 13. 2.

Act. 23. 5.

Exod. 22. 28.

Eccles 10. 20.

to cure that disease, and prevent all danger that may happen to the Head. So in the Body Politick, if the King (the Head of that Body) have any errors or failings, as (our Blessed Saviour only excepted) the best men in the world ever had; then all the members of that Body (as by the indispensable Law of Allegiance, they are bound) ought to conceal the frailties of their Prince; and not to censure or publish them to his dishonour, either by word or writing.

2. But notwithstanding this, it is too certain, that in this Nation, in the late unhappy times of confusion, and most horrid Rebellion, we have had a multitude and rable of seditious people, (who miscall'd themselves the Godly party) who have been so far from duly honouring their Gracious Sovereign, maintaining the known Rights of his Crown, and preserving his Sacred person from danger,

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ger, that they have (without all ground) *falsly slandered*, and in the *Press and Pulpit*, by *Lyes and Libels*, endeavour'd to ruin his honour and reputation. Nor stay'd they here, but having got power to compleat the Tragedy, they did, what before they desired, seise the *Kings Revenue*, and all the *Rights of the Crown* into their own hands, and at last, with a prodigious, and more than *Pagan impiety*, (*horresco referens*) they murdered their innocent and pious Prince. An act so villanous, and so far beyond all expression barbarous; that since our Blessed Saviours death, no Age or Nation ever had, or (I hope) ever will have, any Villany equal to it, and (all circumstances considered) of parallel impiety. And since his Majesties happy and Miraculous Restauration to his Fathers Throne in peace, it is too evident by the impious Plots and Conspiracies

spiracies happily discovered, and their disloyal and Trayterous designs disappointed, some still remain, who if they had (what I hope they never will) ability, want not a mind to do mischief, who have talk'd so long of that liberty and property of the subject, that to maintain the just Rights and Prerogative of their Prince, (which in the first place ought to have been consider'd and preserved) is no part of their care and desire, but rather the diminution of it, and (had they ability and opportunity) the utter abrogation of it.

The Premisses consider'd, I think that every loyal subject, as he is (by natural or sworn Allegiance, or both) at all times, so especially in the circumstances we now are, is obliged with more care and diligence, to maintain and vindicate his Sovereigns just Rights and Prerogatives. For where and when there is greater

and more eminent danger, there ought to be greater care and diligence to prevent it. These Considerations, and some addressees of some honest Cavaliers, who believed, that the King had power, by his Prerogative Royal, to pardon in the Case proposed, but could more easily believe the truth, than answer Objections against it, and therefore desired my assistance to help them to answer the principal (and indeed the only pretended) Objection, which seem'd (and only seem'd) to prove, that his Sacred Majesty could not pardon a person legally condemn'd for Murder. I say, that these reasons induced me more seriously to consider the Case proposed, and after diligent consideration of all the particulars, being in my own judgment convinc'd, and having satisfi'd my doubting friends, That his Majesty might lawfully pardon such a condemn'd

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Malefactor, I shall now (in short) give you an account of those Reasons which satisfy'd me and them, and refer them to your *better Judgment*. And here, that I may let down what I have to say, with more method and perspicuity: I shall, 1. Suppose two or three things, which (to me) *seem evident Truths*, and will conduce to manifest his *Majesties power to pardon*, and then I shall proceed. I suppose then,

1. That the *Kingdom of England* is a *Monarchy*. That is, (as the word signifies) a *Government*, wherein the *Supreme power* is in one single person. This our *Statutes* say, and (in our *Oath of Supremacy*) we swear, That the *King* is the ONLY SUPREME, Governour of this Realm. 1. *Supreme*, and therefore none above him. 2. ONLY Supreme, and therefore none coor-

Stat. 1 *Eliz.*
cap. 1.

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dinate with him, or equal to him.

2. That *England* is an *Hereditary Monarchy*. We say, the *King* never dies. The man who was *King* may die, and cease to be, but the *King* and *Royal Power* ceases not, but immediately descends to, and is seated in his next *Heir* and *Succeſſor*. In the next minute after any *King's* death, the next *Heir* to the *Crown*, is actually *King*, as well and as much before, as after his *Coronation*. As in *Matrimony*, it is not the *Solemnization* of it, in the *Church*, nor the *Prayers* and *Benediction* of the *Priest*, that makes *Husband* and *Wife*: For it is (by *Law* and *Reason*) certain, that *consensus facit Matrimonium*: *Solemnization* of it in the *Church*, is only a publick *Declaration* of the antecedent consent, which made the parties man and wife coram Deo, before they came to the *Church*. So is *Coronation* to a *King*, it does not constitute

stitute and make him so, but pre-
suppose and declare publicly, that this
person is indeed our Prince. Neither
has the Pope or people, any thing to
do by way of Election or approbati-
on of a Successor to the Crown. And
so in our Oath of Allegiance, we
swear fidelity to the King, HIS
HEIRS and SUCCESSORS.

Statut. 3. Ja-
cobi, cap.4.

The same Oath of Allegiance we
took to Charles the Martyr, in the next
minute after his death, as equally
and indispensably bound us, to be loy-
al and faithful to his Son and Heir
Charles the Second, our now Graci-
ous King.

3. The Kingdom of England is
not only a Monarchy, but an AB-
SOLUTE Monarchy. So my Lord
Cook tells us, in these signal words,
Thus it hath appeared, as well by the
ancient COMMON LAWS, as by
the Judgment and RESOLUTION
of the JUDGES of the Laws of En-
gland,

My Lord
Cook's Repor.
Part. 5. de Ju-
re Regis Eccle-
siast. pag. 40.
Edit. Lond.
1612.

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gland, in *All AGES*, and by the Authority of *MANY ACTS* of Parliament, that the Kingdom of England, is an *ABSOLUTE* Monarchy; and that the King is the Supreme Governour, &c. And Sir John Davis, (that I may not trouble you with any more Quotations) says the very same thing, * *The Kings of England are ABSOLUTE EMPERORS in their Dominions, &c.* And again, † *The King of England has the same ABSOLUTE Liberties in his Dominions, as the Emperor in his Empire.* The meaning is not, that our Kings are so absolute as to be freed from obedience of the Laws of God, (natural or positive in the Gospel) but because there is no power on earth, (except their own) which can lay any obligation or limitation upon them. And this is evident, because our Kings being supreme, having none superior or equal to them, it is impossible,

* Sir John Davis his Reports, in the Case of *Praemunire*,

(which is his last Case) pag. 87.

† Idem *ibid.* pag. 89. col. 2.

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sible, that any power on earth, (for it is most certain that no inferior power can do it) should be able to oblige or limit them.

But it may be said, If our Kings Object. be absolute, so as no power on earth can oblige or limit them, then they may by themselves make and abrogate Laws, lay Taxes on the people, &c.

This does not follow; for al- Sol. though no power on earth is superior to them, or can oblige or limit them, yet they may limit themselves, by Oath or promise; and so our Kings have limited their power, and promised and (in their Coronation-Oath) sworn to do none of those things without the consent of their people in Parliament.

But does not this limiting themselves, take away and destroy their Absoluteness? Object.

No; if any other power could lay Sol. Obligations and Limitations upon them, then (I grant) they were not absolute, but

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but to limit themselves, is consistent with absolute power. For the truth of this, we have an evident and authentick instance. It is most certain, that God Almighty is an absolute King of all the world; yet, (for the comfort of his people) he has limited himself by Oath and promise, (so the Apostle tells us) That by two immutable things, in which it is impossible for God to lye, we might have strong consolation.

Heb. 6. 17, 18.

These things premised, concerning the great power of our Kings, That it is Monarchical, Supreme and Absolute, the Query is, Whether they can and lawfully may, either

1. Reprive } a person condemn'd for
2. Or pardon } Murder?

Now it is a certain Rule, (in Law and Reason) that *Omne illicitum est ex lege aliqua illicitum*. Sin is the transgression of a Law; and, where there is no law, there is no transgression. If then

1 Joh 3. 4.
Rom. 4. 15.

then *such Reprive or Pardon be unlawful*, and may not be granted by the Kings of *England*, then it must be so, by *some law*, which prohibits it, and that must be either,

1. *Some Humane*, or
2. *Some Divine*, } *Law.*

For the *first*, unless it do appear, that the Kings of *England* are prohibited to *reprive or pardon* such malefactors, by *some law of our Nation*, to the making whereof they have given their consent, and so limited their own power : I say unless there be *such a law*, it will be evident, that it cannot be *unlawful* (by any *humane law*) for our Kings to *reprive or pardon* such malefactors. But although I have reason to believe, that there is no *such law* ; yet whether there be any *such Law* or no, I shall not determine ; but leave it to the *Reverend Judges*, and the *learned in our laws*, who are *best able* to determine
that

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that Question. It belongs not to my calling, or present business to determine the Case, by humane laws. That which was desired of me was this, *Whether the Reprive or Pardon of a person legally condemn'd for Murder, were prohibited, and so unlawful by the law of God; particularly by that Law given to the Jews by Moses, in these words, Thou*

Numb. 35. 31. *shalt take NO SATISFACTION for the life of a murderer, who is guilty of death, he shall SURELY BE PUT TO DEATH.* Now to determine this case of Conscience, by the Divine Law, is within the compass of my Calling; and by this time (at the Age of 77.) I am, or ought to be, in some measure, a competent Judge of such Cases. And therefore, seeing nothing is required of me, save (what is in my power to give) my Opinion in the Case; I shall here,

1. Humbly and with submission

on to my Superiors, give my opinion and judgment in the Case.

2. The Reasons for it.

1. For the first, my present opinion and judgment is, That there is no Divine Law which prohibits, and so makes it unlawful for Supreme Princes, to Reprive or Pardon a person legally condemned for murder. And this I shall endeavour distinctly to shew and prove,

- 1. That a Reprive is not by any Law of God
- 2. That a Pardon is unlawful.

1. For the first, To Reprive, is Repriving not to null or make void the Sentence pass'd upon a murderer, or to free him from it; but only (for some time) the delaying the execution of it. Now 'tis certain, that there is no Law of God which prohibits such Reprive, and delay of executing the sentence, or any way make it unlawful for the Supreme power to grant such Reprive.

Numb. 35. 31.

prive. The severest Law against Murderers, is that in the Book of Numbers, (but now nam'd) which says; That no satisfaction shall be taken for the life of a Murderer, but he shall surely be put to death. But that Law does not say, that he must die the same day the sentence pass'd, or the same week or month. If a Murderer be executed a month after the sentence passed, he dies AS SURELY, as if he had died the same day.

Mat. 22. 39.

2. There may be just reasons drawn from the Law of Nature and Scripture, why (in many Cases) the supreme Magistrate not only lawfully may, but ought to grant such a Reprive. The Law of God and Nature, does indispensably bind all, to love their neighbour as their selves; and therefore (so far as we have ability) to endeavour his Salvation. Now a condemn'd murderer (who has no pardon) is sure to lose a temporal life,

life, and that he may not lose eternal life too, (it is the observation and judgment of the best Scholar and Lawyer in his time) it will, and should be the care of pious Princes, not to hurry such condemn'd malefactors hastily to death, but to grant them some time, (by a Reprieve) before they leave this, to consult their Ghostly Father, and (by prayer, confessing their sins, true penitence, and the comfort of Absolution) prepare themselves for a better life. 3. But although this be a certain truth, That the Supreme power may reprieve a condemn'd Murderer, yet it will further appear, (and beyond all contradiction) in the proof of the next particular: Where it will appear, That the King (by his Supreme power, and Royal Prerogative) may lawfully pardon such a condemn'd malefactor, and therefore much more may he lawfully Re-

K

prive

*Ne cum vita,
spatium ad pœ-
nitendum præ-
cludatur, sciant
hujus rei, à
piis magistra-
tibus, summam
haberi ratio-
nem, nec quen-
quam ad sup-
plicium RAPI,
NISI DATO
TEMPORE,
quo peccata
sua agnoscere,
& serio dete-
stari possit.
Grotius de
Jure Belli,
lib. 2. cap. 10.
De Pœnis.
Sect. 12.*

prive him. For he who can lawfully pardon and remit the punishment of Death, that it shall never be inflicted, may certainly for some small time, (for a week, a month, or two) suspend and delay the execution of it. And so I proceed to the second particular.

2. Pardoning.

2. It is not unlawful by any Divine Law, for the Supreme Power, to pardon a person convicted and condemned for Murder. The reason is evident, because there is no Divine Law, which prohibits the Supreme power to grant such a Pardon. That this may more distinctly appear, it is certain and confess'd, that Divine Laws are either,

1. Evangelical, made known to us in the Gospel.

2. Mosaical, such as God by Moses made known to his own people the Jews.

1. For the first, The Evangelical

cal Laws were given by our Blessed Saviour in the Gospel, for the gathering and perpetual Government of his Church. Now it is certain, that amongst these Laws there is nothing of any temporal punishment. Our Blessed Saviour tells Pilate, That his Kingdom Joh. 18. 36. was not of this world; (it was no Temporal Kingdom) It was not to be promoted by the sword, or temporal punishments. He left his Apostles no power to punish the transgressors of his Laws, either, 1. In their Purse, (by Pecuniary Mulcts or Fines.) Nor, 2. in their Persons (by Death or Imprisonments.) All such Power does, and ever did belong to the Civil Magistrate, who only has *Jus Gladii*. Nor is there any Law in the Gospel, which so much as mentions, much less prohibits the Civil Supreme Magistrate, to pardon condemn'd Malefactors.

2. For the Mosaical Laws, (Cere-

The Case of Pardoning Murder.

monial and Judicial) they were such, as were given by God himself, for the good Government of the Jewish Commonwealth. Now concerning these Laws, it is certain,

* Psal. 147.
19. 20. Rom.
9. 4. Eph. 2.
12.
† Suarez de
Legibus, lib.
9. cap. 5. Sect.
7. p. 738. A-
quin. 1. 2.
Quest. 98.
Art. 4. Filliuc.
Moral, Quest.
Tom. 2. Trac.
21. cap. 11.
Sect. 402.

1. That they were given * only to the Jews, as is confess'd and fully † proved by the Schoolmen and Casuists.

2. It is certain, that no positive Law (Divine or humane) does, or can bind any save those to whom it is given, and sufficiently promulgated and made known. A sufficient Promulgation is absolutely necessary to the Obligation of any positive Law.

3. And hence it follows, that those Mosaical Laws never bound the Gentiles before our blessed Saviour's time, much less Christians since, (as will anon appear.) And therefore if that Law in Numb. 35. 31. (but now mention'd) or any other Mosai- cal Law, had absolutely forbid, and made

made the pardoning of Murder unlawful to the Jews, yet it will not hence follow, that it should be (by that Law) unlawful for Gentiles or Christians to pardon it, seeing it is manifest, that those Mosaical Laws were never given to, nor any way obliged them. For the Transgression of any Law, does necessarily presuppose its Obligation: It being impossible I should transgress a Law, which never bound me to Obedience.

4. The obligation of the Ceremonial Laws ceased, (even to the Jews, to whom they were given) at the death of our Blessed Saviour. They were Types and Shadows of his Death, and our Redemption by him; and when the Substance, and thing typified by them was come, the Shadows ceased. Whence it is, that Divines (both Ancient and Modern) truly say, That at our Blessed Saviours Death, the Jewish Ceremonial Law was Mor-

tua, (as to its obligation;) it was abrogated, and the observation of it not necessary; tho for some time, to gain the Jews, even the Apostles did voluntarily observe it. But when the Gospel was more fully published, it became Mortifera, and the observation of it inconsistent with the Gospel.

Gal. 3. 2.

5. For the Judicial Law of the Jews, it is certain, that the Obligation of it ceas'd (at least) at the destruction of Jerusalem, when the Jewish Government, and their Commonwealth was utterly destroy'd.

6. And hence it evidently follows, that all those Mosaical Laws, (Judicial and Ceremonial) have been abrogated and null, and have neither bound Jew or Gentile above this 1600 years last past; and therefore it is impossible that any of them should now bind any Christian Supreme Power not to pardon any condemned malefactor. And

And what is said of the *Judicial* and *Ceremonial Laws*, given to the *Jews by Moses*; that none of them ever did, or could bind any *Gentiles* or *Christians*; the same we say, of the *Moral Law*, (as to punishing or pardoning Murderers) that it never prohibited *Supreme Princes* to re-prive or pardon any person condemned for Murder. That this may appear, it must be considered, that there are *two Editions* of the *Moral Law*; both writ by the Omnipotent and Gracious Author of it, by God himself,

1. In the heart of *Adam*, where it was most intirely and perfectly writ. His Understanding being clear, and abundantly able to know and distinguish good from evil; *quid faciendum*, *quid fugiendum*; and his will obsequious to follow those dictates of right Reason. But by the fall of *Adam*, this Writing and perfect Edition of the

Moral Law, was much blotted, corrupted and defac'd, both in Adam, and all his Posterity. For although the substance of that Law, did (after the fall) continue writ in their hearts; yet so defac'd by the Fall, that (ignorance having blinded the Understanding) it was in many places, not legible, nor (sin having corrupted the will) practicable.

2. The second Edition of the Moral Law, (in respect of the writing of it, which remain'd in the hearts of men after the fall) was *multo auctior & emendatior*. And this Edition of the Moral Law, is that, which God, by Moses, gave only to his own Church and People the Jews. In which he gave them,

1. A just and perfect Compendium of that whole Law in two Tables of Stone, containing Ten Precepts.

2. A full and more perfect explanation of those Precepts, and the parti-

particular duties required by them.

3. An addition of many *Gracious promises and blessings* to those who *sincerely observ'd those Laws*; and many *threats and punishments* for those who *transgress'd any of those Laws*. This Edition of the *Moral Law*, with the many *promises and punishments annexed*, was (as I said) given only to the *Jews*, not to the *Gentiles*.

And this appears by that memorable passage in *St. Paul*, wherein he tells the *Romans* in these words, *The Gentiles which HAVE NOT THE LAW, do BY NATURE, the things contained in the Law: These HAVING NOT THE LAW, are a law to themselves, which shews the work of the Law WRITTEN IN THEIR HEARTS.* In which words, we have the *two Editions of the Moral Law*, afore mentioned, expressly set down, and that the *Gentiles* had

Rom. 2: 14

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had only the first Edition; and that the second and more perfect Edition, was given only to the Jews, For the Apostle says,

1. That the Gentiles HAD NOT THE LAW; to wit, as it was *Lex scripta in Lapide*, and given to the Jews, with the Addition of many Promises, and many several punishments annex to the transgressions of particular Precepts.

2. That the Gentiles HAD THE LAW writ IN CORDE, for so all men by nature had it. And 'tis the Moral Law he means, for no positive Law of God or man, is by nature writ in any mans heart.

Now what is said in the second and more perfect Edition of the Moral Law, as it was given by Moses only to the Jews, is either, 1. *De Officiis*.

2. Or *de pœnis & promissis*.

1. *De Officiis*; *quid faciendum aut fugiendum*: What good we are to do

do in obedience to the *Affirmative Precepts*. As in that, *Remember the Sabbath-day to keep it holy: Honour thy Father and Mother, &c.* And what evil we are to avoid in obedience to the *Negative Precepts*; such as these, *Thou shalt not kill, Thou shalt not commit Adultery, &c.* In short, the sum of all those Duties which the *Moral Law* requires of us, is this, *That we love God with all our heart, and our neighbour as our selves.* Now as to all these duties, the obligation of the *Moral Law*, is *Universal, Eternal, and Indispensable*. It binds all men, *Jews and Gentiles*, and that *indispensably*.

2. *De promissis & pœnis*, concerning the *Promises* and *punishments* which are annexed to the *Moral Law*, as it was given to the *Jews* by *Moses*. And here,

1. For the *Promises*, it is certain that they were given *only to the Jews*.

Eph. 2. 12. &
Eph. 3. 6.

Jews. For the Apostle expressly tells us, *That the Gentiles were aliens and strangers to the promises.* For instance, the promise added to the fifth Commandment, *Honour thy Father and thy Mother, that thy days may be long in the land which the Lord thy God GIVETH THEE.* Canaan is the Land promised and given to the *Jews* only, not to the *Gentiles*, nor ever intended for them; it being indeed impossible, that all *Jews* and *Gentiles* should live in that little Land. But to pass by the promises, (which do not so properly belong to our present business) I say,

* This the Schoolmen and Casuists generally confess and prove. See Suarez de Legibus, lib. 9. cap. 5. Sect. 7. pag. 733. Aquinas 1, 2. Quæst. 93. Art. 4. Billincus, Quæst. Moral. Tom. 2. Tract. 21. cap. 11. Sect. 402.

2. That it is as certain, that all the *Mosaical Laws de Pœnis*, are (not natural, but) *Positive and Judicial Laws*, which never bound any save the * *Jews*, (or those who became *Profelytes*, and voluntarily submitted to them) to whom only they were given. That this may further and more

more distinctly appear, it is to be considered as certain and confessed,

1. That the *Law of Nature* (as all just Laws do) binds all men; 1. *Ad Obedientiam*, to a willing and perfect Obedience. And, 2. (upon supposition of sin) *ad Pœnam*. But the Punishment to which the *Law of Nature* binds, is *Death*; and that *Eternal Death*. For as in *Adam* (by reason of sin) all die; so they had died eternally, had not God most graciously sent his Son to redeem them from that death. Every sin (how small soever) by the *Covenant of Works*, (of which the *Moral Law* was the condition on mans part to be perform'd) was a capital crime, and *Death* the *Wages* or punishment, (by that law) due to it. But those many various laws de Pœnis, which occur in the *Mosaicall law*, which he gave to the *Jews*, are not νόμοι ἡμετέροις, καὶ τῇ καρδίᾳ ἡμετέροις, non leges nobiscum natæ, & in corde

1 Cor. 15. 22.

Deut. 4. 13.

Rom. 6. 23.

corde naturaliter inscriptæ ; not Natural laws, writ in our hearts, and born with us : But they are νόμοι θεῶν, *leges à Deo datæ*, positive Laws, which neither do, nor ever did bind any but the Jews. As may appear,

Deut. 29. 1.

* *Israelita ex-
eunt ex Ægypto,
Anno Mundi,
2453.*

2. Because they were given only to the Jews; and that after they came out of Egypt, which was after the Fall of Adam *, above 2450 years. But those Mosaical Laws de Pœnis, (of which we speak) were never given, nor publish'd to the Gentiles. But had those Laws de Pœnis, been Natural Laws, (as the Precepts in the Decalogue are) they would have bound all mankind from the Creation to this day, and that indispensably; and then all Christians should be bound to obey and practise those Penal laws, and punish all Malefactors with such punishments only as in those laws are appointed; which is evidently untrue, as may appear,

3. By

3: By the judgment and consent of the *Christian World*; for no *Christian Church* or *State* did ever think themselves bound to observe those *Mosaical Pœnal Laws*, and to punish transgressors of the *Divine Law*, with those punishments which are prescribed by *Moses*. For instance, That the stealing of a *Sheep* should be punish'd with *restitutio in quadruplum*, with restoring four sheep for one, (if the thief had sold or kill'd the sheep he stole); but if the sheep was found in his hand who stole it, he was only to restore two sheep for one. That the stealer of an *Ox* should restore five *Oxen*. That he who curseth, or who smiteth his father or mother, or will not obey them, should be punished with death, and stoned with stones. That to do any of our own work (so much only as to gather a few sticks) on the *Sabbath day*, should be capital, and the offender in any one of these

Exod. 22. 1.

Exod. 22. 4.

Exod. 22. 1.

Exod. 21. 15.

Levit. 20. 9.

Deut. 21. 20,
21.

Exod. 31. 15.

Exod. 35. 2.

Numb. 15. 32,
35.

these things, surely put to death; although these, and such other Laws de Pœnis, were Divine, given to the Jews by Moses, and obliged them; yet no Christian Church or State, did ever think themselves obliged to the observation and practice of them. And they had good ground in the Gospels to think so. For,

Mat. 5. 6, &c.

*Exod. 21. 24.
Deut. 19. 21.*

Mat. 5. 38.

4. Our Blessed Saviour in his Sermon on the Mount, explains and confirms all the Moral Laws de Officiis, yet those severe Mosaical Laws de Pœnis, he did not confirm: But expressly declares, that legal severity to be inconsistent with the Charity of the Gospel. For though by the Mosaical law, a Jew might justly require, and the Judge give an eye for an eye, and a tooth for a tooth; yet our Blessed Saviour expressly declares against such legal severity. You have heard (saith he) it has been said, (in the Law of Moses) an eye for an eye,

eye, and a tooth for a tooth: But I say unto you, *Resist not evil, &c.* He does not allow that severity in poenis, in the Gospel, which Moses allow'd the Jews under the Law; and therefore we may be sure, that it was not any Moral or Natural Law which required those punishments appointed for several sins in the Law of Moses, (for then they had been unalterable, nor would our Blessed Saviour have contradicted them); but it was the positive law of Moses which required them of the Jews, to whom only those Laws were given, and obligatory. And here (for further evidence of this truth) it is to be considered,

1. That in that *Mosaical Law*, Numb. 35. 31. (which is ignorantly or maliciously urged to prove that our Gracious Sovereign cannot pardon murder) the strictest binding words are these, *The Murderer SHALL SURELY BE PUT TO DEATH.* Therefore,

/ L (say

(say they) he cannot be pardon'd. They who reason thus, did not well consider the consequence of such arguing from the Penal Laws in Moses. For if this argument be good, Moses says, *The Murderer shall surely be put to death; Ergo, He cannot be pardon'd.* Then this (grounded on the same law of Moses) will be every way as good and concluding. The same Moses says, *Who-soever doth ANY work on the Sabbath-day, he shall SURELY be put to death: Ergo, He cannot be pardon'd.* If such Logick were good, it would conclude all men to be unpardonably guilty of death; seeing (I believe) there is no man who on some Lords-day, has not done some work, and therefore (by such Logick as this) must be unpardonably guilty of death. But enough of this, for indeed such arguments do not deserve any serious answer or confutation.

Exod. 31. 15.

futation. Sure I am, that never any Christian Church or State did, (or had any reason to) believe, That the severe Jewish Law, for the observation of the Sabbath, did oblige Christians; and therefore there neither is, nor can be any more reason why their severe Law against Murder should be now obligatory to Gentiles or Christians, to whom it was never given.

2. When the Law says, *The Murderer shall SURELY die*; our best * Commentators (out of the Rabbins) say that this is spoken to the Judges, before whom such Causes regularly came. Now those Judges in the Jewish Commonwealth were appointed by the Supreme † Power, and by his Authority judged and determined Causes under him. Admit then, that the Judges (who were Magistrates Subordinate to the Supreme Power) were to take no satisfaction for the

Num. 35. 31.
* See Ainsworth on
Numb. 35. 31.
and R. M. Maimonides (by him cited) in his Tract. of Murder, cap. 1. Sect. 4.

† Deut. 1. 13.
& 15. 2.
Chron. 19. 5.

life of a Murderer, but were (by that Law) oblig'd to condemn and execute him; yet it does not hence follow, that the Supreme Power (who made them Judges) might not (in some cases) reprove or pardon some, whom they had condemn'd. Sure I am, that David (the best of Kings) who knew the Jewish Laws as well as any, did reprove Joab, who had murder'd

1 King. 2. 5, 6. Amasa and Abner, and delay'd the execution of the Law, and left it to Solomon his Son, who did accordingly

1 King. 2. 29, 30. ly put Joab to death. 2. And as David reprov'd Joab, so he pardon'd

2 Sam. 16. 21, 33. Absolon, who had slain his Brother Amnon. Nor does the Scripture any

where impute the reprove of Joab, or the pardon of Absolon to David as crimes or transgressions of the Law of Moses; but rather declares him innocent, when it is expressly said, That

1 King. 15. 5. David did that which was right in the eyes of the Lord, and turned not aside, from

from ANY THING, that he commanded him, ALL THE DAYS OF HIS LIFE, save ONLY in the matter of Uriah the Hittite.

Now, if notwithstanding those Mosaiical Penal Laws, it was lawful for David, the Supreme Power amongst the Jews, (to whom those Penal Laws were given, and they bound to the observation of them:) I say, if David might lawfully Reprive and Pardon Murderers, how can it by those very Laws be unlawful for the Christian Supreme Power and Gentiles (to whom those Laws were never given, nor they ever under the obligation of them) to reprive or pardon such condemned malefactors? In short, the sum of what I have said, endeavour'd to prove, and believe to be true, is this:

1. That there is no Law of God or Man which does prohibit, (and so make it unlawful for) Supreme Princes,

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ces , to grant such Reprives and Pardons.

2. That the end of all Penal Laws, and of their due Execution, is, that the honour of our great and most Gracious God, and his true Worship and Religion be preserved, and, *Ne quid detrimenti capiat Respublica*, that the Commonwealth be not damnify'd, by too usual and frequent granting pardons : For too great Impunity will occasion and encourage Impiety.

3. That all loyal and faithful subjects are bound, (and have good reason) to believe, that his Sacred Majesty, as he is Gods immediate Vicegerent, Defender of the Faith, and whose greatest Interest it is to promote those good ends; so he will carefully endeavour (by a due Execution of our good Laws) to attain those ends.

4. That such Cases heretofore have,

have, and may again happen, wherein (the time, persons, and all other Circumstances duly consider'd) a Reprieve may not only be lawful, but necessary: And wherein a Pardon may conduce every way as much, (and possibly in some Cases more) for attaining the good ends of Penal Laws, as a perpetual, severe, and rigorous execution of them. And of such Cases, the King is the Supreme and sole Judge, who (if need be) may call for, and have the advice and counsel of any of his Subjects, of whose prudence and piety he is well assur'd. This is the sum and substance of what I have said, at several times, to several persons; to confirm them in the belief, and encourage them to a just vindication of His Majesties Legal Rights and undoubted Prerogative. And what I have done in this, was a duty I did owe to my Gracious Sovereign, not only by common

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mon Allegiance, as he is my King, but in gratitude as to my Patron, whose undeserved favour and goodness, has plac'd me in the good Station wherein I am. And therefore, that God Almighty would be graciously pleased to bless and preserve his Anointed from all the impious Plots and Conspiracies of all His enemies, give Him a long and peaceable possession of a Temporal Crown here, and an Eternal Crown of Glory hereafter, is, and shall (while I live) be the Prayer of

Buckden, Jan.
20. 1684.

Your Affectionate Friend

and Servant,

T. LINCOLN.

Mr. Cottington's Case,

CONCERNING

The Validity or Nullity of his
Marriage with *Gallina* (her
former Husband then living)

Anno. 1671.

Mr. Gorington's Case

D O C U M E N T
OF
Case of Conscience
P R O P O S E D

CASE THE FIRST

CASE THE FIRST
OF A MAN WHOSE CONSCIENCE
WAS TROUBLED BY THE
DANGER OF A
YEAR AND A HALF'S
DANGER OF A
YEAR AND A HALF'S

1

Mr. Cottington's Case:

A
D O U B T
O R
Case of Conscience
P R O P O S E D.

CASE. THE FIRST.

1. **G** *Allina* Marries *Patrimoniale*,
Anno. 1664. Lives and Co-
habites with him as his Wife
2 year and a half, has a Child by him (a
Daughter :) And all this while volun-
tarily gives him Reverence and due Be-

B 2

nevo-

nevolence ; *Sine protestatione aut Querelâ*, without any protestation or complaint, of any Nullity or Illegality of the Matrimonial Contract, by reason of any Antecedent Force or Fear to make her consent and plighted troth Involuntary ; never endeavours to recede and make an Escape from him, when she was in *Loco Tuto*, and had opportunity to make such Protestation or recess with safety.

2. After this, *Anno. 1666.* The Archbishop of Turine (by sentence given) pronounces the said Marriage Void and Null, by reason of Force and Fear into which her Father put her ; which rendered Gallina's consent involuntary (as was supposed) and contrary to the nature of a *Conjugall Consent*, which (*Jure Naturæ*) ought to be free and spontaneous, otherwise it will not be Obligatory.

3. After this, *Anno. 1671:* The said Gallina Marries Mr. Cottington, (her former Husband then Living, and who is yet alive)

Mr. Cottington's Case.

3

alive) and at Law, and in the Court of the *Arches*, claims him for her *Husband*.

4. The Court (*Sententiâ latâ*) Determines and Declares that Mr. Cottington and *Gallina* are lawfully *Husband and Wife*, (without taking notice of the Archbishop of *Turin's* Sentence, whether it was valid or void) and injoyn'd them to Co-habit.

2. This is the Case, and the Query is, Whether Mr. Cottington (after a just and serious consideration *The Query.* of the Premises) may acknowledge, take and use *Gallina* as a lawful Wife without Sin; and so with a safe Conscience, and (without Danger or Fear of offending God) with security to his Soul?

3. This is the Case of Conscience in which my Opinion is desired, which *The Answer.* how insignificant soever it may prove, yet (in Obedience to the commands of that *Excellent and Noble Person*

B 3

who

who requires it, and *Charity* and *Satisfaction* to the doubting Gentleman, and discharge of my own Duty (as a *Minister*.) I shall willingly give it, and plainly set down what (at present) I conceive truth in the *Case*, and the reasons why I do so.

The *Premises* then (as before set down) being supposed true; and (as to matter of Fact) granted, (with submission to the better Judgments, of persons of greater Knowledge in Divinity, the *Common*, *Canon* and *Civil Laws*,) my answer is Negative: That Mr. Cottington cannot (with a safe Conscience, and security from Sin) acknowledg, take and use *Gallina* as his lawful Wife. And this seems to me, not only a Probable, but a certain and evident Truth.

That this may appear, I consider.

1. That 'tis certain and confess'd that the Obligation of the Matrimonial contract, is not grounded on any Positive constitution of Man, but on the *Divine Law*

Mr. Cottington's Case. 5

Law of God and (a) Nature. For although the contract cannot be made without the positive consent of the Parties, yet the consent once pass'd, the Obligation to conjugal Duties ariseth immediately from the Law of Nature.

(a) *Jus naturale quod instinctu nature non constitutione aliqua habetur, ut viri & femine conjunctio. Carr. Jus naturale 7. Dist. 1. & L. Jus naturale 1 Institut. de Jure Nat. Gent. & Civil.*

2. Hence it is, That this Matrimonial contract (while the (b) Parties live) is Immutable and Indispensable; and therefore Marriage (in the (c) Law is defin'd to be, *Maris & Femine Conjunctio, Divini & humani Juris communicatio, & omnis vite consortium.*

(b) *Rom 7. 2. 3. The Wife is bound to her Husband so long as he liveth, &c.*

(c) *Modestinus Leg. Nuptiae 1 F. De Rit. nuptiarum.*

3. And hence it follows evidently; That if the conjugal contract between *Patrimoniale* and *Gallina*, was (*Matrimonium legitimum & ratum*) a legall and valid marriage, *ab Origine*; and when it was made, then it continues so, (both

parties being yet living) and was and still is valid and obligatory. If it was a just and valid contract in 1664. it must continue, and be so now, in this year, 1677.

4. And further, if this be true and granted, that *Gallina's* Marriage with *Patrimoniale* in, 1664. was and to this day continues valid ; then her Marriage with Mr. Cottington, Anno. 1671. is absolutely Null, and to all intents and pur-

(d) L. *Impossib.*
185 F. de *Regulis*
Juris § L. 31. &
135 F. *ijdem.* 'Tis
certain a precontract
nulls any subsequent
Marriage. Canons 1
Jac. 1603. Can. 102.

poses void ; for first, *Im-*
possibilium nulla est (d)
obligatio, or contractus con-
tra naturam & bonos mores
initus, est omnino nullus. If
Gallina's pre-contract and
marriage to her former

Husband, was legal and valid, then her subsequent Marriage with Mr. Cottington, was an evident violation of the Law of Nature, (which indispensably oblig'd her to be Faithfull to her former Husband,) and of her Faith before So-

lemnly

Mr. Cottington's Case.

7

lemnly given to another, and so absolutely Null, and in it self Void. Secondly, It is consonant

(e) to Law and right Reason, and a received rule in all contracts (as well as Matrimonial.)

(e) *Nemo potest mutare consilium suum in alterius injuriam L. nemo potest 75 F. de Reg Jur. Antiqui.*

Quod (f) *nemo potest alterâ parte invitâ, a contractu semel perfecto recedere.* And therefore, if *Gallina's* conjugal contract with *Patrimoniale*, was perfect and legally valid, she could not (without manifest Injustice) recede from it, leave him, and adhere to another Husband.

(f) *Remuneriare semel constitutæ obligationi adversario non consentiente nemo potest L. sicut 5 Cod. de obligat. & Actionibus.*

In *Matrimony* (as generally in other contracts,) our consent in (g) making them, is, (and should be) free and voluntary ; but when they are made, their Obligation and our Obser-

(g) *Contractus ab initio voluntatis, ex post facto, necessitatis. Gothofred in notis ad dictam legem. sicut. Lit. i.*

vance

vance of them is necessary. So that if this be so, if the Matrimonial contract between *Patrimoniale* and *Gallina* be legall and really valid, then no power on Earth or (*de Jure*) can oblige Mr. Cottington to Co-habit with *Gallina*, as with his *Lawfull Wife*; seeing on the foregoing Hypothesis, she is indeed Wife to another Man. And if any (though the Supreme Authority) should command Mr. Cottington so to Co-habit with *Gallina*, this were to require him to live in impious, and abominable *Adultery* with another Man's Wife, which as no *Humane Power* can justly command; so neither Mr. Cottington (nor any other) can obey without wounding his Conscience, and hazard of his Soul and Salvation. 'Tis active Obedience I mean, for if such commands should come, though we cannot do what's requir'd, yet we may, and ought quietly to undergoe the punishment, & *agere & pati fortia Christianum est*, no Courage like that of a good Christian;

Mr. Cottington's Case. 9

Christian ; who will suffer any thing patiently from his Governour, rather than sin against his God.

2. The next *Query* will be concerning the *Invalidity and Nullity of Gallina's Marriage with Patrimoniale*. For if it be indeed Null (as it seems, some do, and would persuade others to believe) then the Case is alter'd ; Mr. Cottington may and ought to Co-habit with Gallina, as his lawfull Wife. For if her first Marriage were indeed a Nullity, then her second with Mr. Cottington, will be lawfull and valid, and he obliged to Co-habit with her, as her undoubted Husband. Now in the Case propos'd, I find but two *Mediums* brought to induce a belief, that Gallina's Marriage with *Patrimoniale* was a Nullity.

1. The Authority and Judicial Sentence of the Archbishop of Turine, declaring it to be a Nullity.

2. The reason alledged (on which it seems that sentence was grounded) drawn

drawn from the Force and Fear, which made *Gallina's* consent involuntary.

Now I conceive (with submission to better Judgments) that these *Mediums* are too weak and insufficient to give satisfaction to Mr. *Cottington*, or to quiet his Conscience so as that he may, without danger or doubting Co-habit with *Gallina*. For if he should Co-habit with her, and only doubt of the Lawfullness of it, he

(a) certainly sins. It is a
(a) *Rom. 14. 2. 3.* received and certain rule

amongst *Casuits*, That *quicquid fit reluctantē vel dubitante conscientia est peccatum.*

If my Conscience tell me 'tis not, or doubt whether the thing I do be good and Lawfull (what ever it be) I sin if I do it. And that's the meaning of that saying of the Apostle (many times mistaken) *whatsoever is not of Faith is Sin.* That is, whoever does any thing without a *Moral Certainty*, that what he does is just and lawfull, he sins in doing it. Now concerning the former of those

Mr. Cottington's Case.

11

two *Mediums*, the Archbishop's judicial Sentence in this Case, it is to be consider'd.

1^o That admit that Archbishop and the Pope too (his Superior and beyond Sea) their supreme Judge, had

1^o For the Archbishop of Turin's Sentence.

both concurr'd in giving the same Sentence, and declared the Marriage of *Patrimoniale* and *Gallina* a Nullity; yet seeing (by the known and just (h) Laws of England) they have no Authority or Jurisdiction over any here; 'tis certain, they can lay no Obligation on any English Men, to approve or submit to such Sentence.

(h) *Statut. 24. H. 8. cap. 12. and 25. Hen. 8. cap. 19. 20, 21. &c. 1 Eliz. cap. 1. 3. Jacobi. cap. 4. our Articles of Religion. Art. 37. The Bishop of Rome hath*

no Jurisdiction in England.

2. Nor can such Sentence (if the Pope and Archbishop had given it, be any reason or just ground to warrant any Judge or Court in England, to give the same Sentence, in the same or the like Case,

Case, or be any just bar or reason to hinder them to give the contrary Sentence. All know that a *Facto ad jus non sequitur Argumentum*; the Pope, this, or that Court or Council, judg'd so; ergo; we must or may do so is evidently inconsequent. In the Case of *Hen. 8.* and Queen *Katharine*, the Pope in and with his Consistory, judg'd, that he had Power to give (and actually gave) a *Dispensation to Marry Relictam Fratris, his Brothers Wife*; and yet afterwards, our own at home, and abroad the greatest Universities in Christendom, judg'd the quite contrary in their Convocations call'd for that purpose. Nay our own Supreme Court (the Parliament) in *Hen. 8.* time (a)

Judg'd that Marriage to be against the Laws of God; and in Queen Mary's time, the Parliament (by Publick Act) declared that it was (b) according to the laws

(a) Statut. 25. H.
8. cap. 22.

(b) Statut. 1. Mariae
Seff. 2. cap. 7.

of God. The Sentences of that Supreme Court

are

are contradictory, and *ergo*; one of them (be which it may be, is evidently *Untrue and Erroneous*,) and therefore can neither be a just Warrant for any in *England* to approve it, or judg according to it, or a just Bar or Let to hinder us to judge the Contrary. Now, if notwithstanding the respect and reverence we owe to that *Supreme Court*, we may in this (and many the like Cases) disapprove its definitive Sentence, and be of a contrary Judgment. Then much more may we disapprove, and be of a Judgment contrary to the definitive Sentence of the Archbishop of *Turin*, who is in nothing our *Superiour*, nor hath any Authority or Jurisdiction in *England*; especially in a matter of Fact, wherein neither that Archbishop nor the Pope himself (though the *Jesuites* and some *Canonists* be of the contrary opinion) pretend to be infallible.

And

And once more, as the definitive Sentence of any Popish Archbishop, or of the Pope himself in his Consistory, or in a general Counsel can be no good President or just ground, to warrant any Protestant Judge or Court, to judge accordingly, or any legall Barr or Let to hinder them to give a contrary Sentence; so sure I am, that no such Sentence given by such Persons and Judges in any of their Courts, Consistories or Counsells, can be a sufficient ground for Mr. *Cottington* to relie upon, to give satisfaction and quiet to his Conscience, so as to secure him, that he may safely and without sin, *Co-habit with Gallina*; as with his *Lawfull Wife*; only because they have pronounced her Marriage with *Patrimoniale* to be a Nullity. For (besides that he has many Reasons (if they may be heard, as in Law and Conscience they ought. *Reg. Nullus 20. de Reg. Juris. in 6.*) to suspect and deny that Sentence, and to believe it illegall
and

and unjust. The thing is evident, because definitive Sentences given not only in Inferiour, but in Superiour Courts, and General Councils, are so far from giving satisfaction to Protestants or Papists, or quieting their Consciences in a belief of what is in such Sentences judicially defin'd; that in many things they actually dissent, and confidently deny such Definitions. So it was the *Definitive Sentence* of a Popish (a) Convocation and Parliament (b)

(in the time of *Hen. 8.*) that the King was Supreme over all Persons, and in all Causes Ecclesiastical and Temporal, and that the Pope had no (c) power in *England*, yet the Sentence of those two great Courts (each Supreme in its kind) give little satisfaction to our Papists now, who

(a) *In the Convocation, Anno. Hen. 8. 22. Domini. 1531. Vid. Antiquit. Britan. in Archiepiscopo Warham, p. 325.*

(b) *Vid. 24. H. 8. cap. 12. 25. H. 8. cap. 19, &c.*

(c) *Articuli Relig. Eccles. Anglic. Art. 37. confirm'd in Parliament and subscription required. Vid. Statut. 13. Eliz. cap. 12. Vide Antiquit. Britan.*

C

absolutely

p. 329. ad Ann.
1534. Edit. Hano-
vie 1605.

absolutely deny such Supremacy. So the Convocation and Parliament (in the beginning of Queen Mary's Reign) by their definitive Sentence Establish Popery here in England, which gave as little satisfaction to Protestants, who did both believe and know that the Religion Established was Erroneous, and therefore the Establishment, by the Law of God and the Gospel, unwarrantable and unjust. In short, the adequate and only rule of Conscience, (which can satisfy and quiet it, and on which it may securely rely for sure Directions) is the will of God made known to us, (*lumine naturæ, aut scripturæ*) by natural Reason, or Divine Revelation in Scripture. For what ever can be made appear to us, by clear and convincing Reason, grounded on Nature or Scripture, *de faciendâ aut fugiendâ*, this may and will satisfy, and secure our Conscience, so that we may innocently act

act accordingly; but otherwise, no Sentence of any Man or Court, (*Ecclesiastical* or *Temporal*) can do it, unless the Reasons of such Sentence be (and appear to be) sufficient. And this brings me to the second *Medium*, express'd in the Case, to shew the Marriage of *Patrimoniale* and *Gallina* to be a Nullity.

The reason alledged in the Case, as the ground

(2) *The reason alledged for the Nullity.*

of the Archbishop of Turin's Sentence, and of the Nullity of the said Marriage, is this: That *Gallina* was under a Force and Fear, caus'd by her Father, by reason whereof her consent was not voluntary, (as by (a) Law) it ought to be; and therefore the

Matrimonial contract (for want of such a voluntary and free consent) invalid and a Nullity.

But this reason is too weak, and altogether insufficient.

(a) L. 12. & L. 14. Cod. de nuptiis & Leg. 21. & 22. F. de Ritu nuptiarum cap. Cum locum 14. extra De Sponsali & Matrimonijs.

To be a just ground, either first, of the aforesaid Sentence of Nullity, or secondly, to secure and quiet the Conscience of Mr. Cottington (if he obey'd that Sentence, and should Co-habit with *Gallina*) as may appear if we consider,

1. That 'tis the avow'd Judgment of a *Person Eminent* for his great knowledge of all Learning, especially of the Laws, that no Fear, how great soever (humane Constitutions seclused) does make the actions which proceed from it (b) *Involuntary*; so as to hinder their Obligation and Validity. For he who promises any thing for fear (which otherwise he would not have done) is yet oblig'd to make good his promise.

(b) *Ego (scilicet Grotius) omnino illorum accedo sententiae qui existimant, (sepositâ lege Civili, quæ obligationem potest tollere aut minuire) cum qui metu promisit aliquid, obligari. Grotius de Jure Belli, lib. 2. cap. 11. §. 7.*

2. His reason is (c) because he, or she, who consents and promises any thing for fear,

(c) *Quia consensus hic adfuit, nec condi-*

fear, does indeed and actually consent and promise, and that absolutely, and not upon any condition. This he further proves by the Authority, and an (d) instance of Aristotle; who saies, That he who in a Storm at Sea, casts his Goods over Board, would be willing to save them on this Condition, if he might escape Shipwrack; but in those Circumstances and Danger he is then in, he is absolutely willing to loose them, and cast them into the Sea.

Nor is it Aristotle only and Grotius, who say this, but all the Scholiasts and Commentators on Aristotle, both Greek and Latine, which I have yet seen, say the same thing. And then, if the Authority and Judgment of so many and so learned Men, be valuable, as no

sionalis sed absolutus; nam, ut recte ait Aristoteles, qui naufragij metu res suas jactat, vellet eas servare sub conditione, si naufragium non immineret, sed absolute vult eas perdere, spectatâ scilicet loci & temporis circumstantiâ. Grotius Ibidem.

(d) Aristotle Ethic. Nicom. lib. 3. and Rhodius, and all his Scholiasts and Commentators there.

doubt it is, fear, as is pretended, does not make those Actions whose Principle it is, involuntary, and the truth of this, is further and beyond dispute evident.

3. Because Fear is the Principle which makes such Actions voluntary, and the Person under such fear willing to produce them. For 'tis evident, that there is nothing which makes a Man in a *Storm* willing to cast his Goods into the *Sea*, but the fear to loose his *Ship* and his *Life*, if he do not so. Nay, secondly, so far is fear from making our actions Involuntary, that the greater the fear is, they are by it made more voluntary; for no Man before he was in fear, was ever willing to cast his Goods into the *Sea*, but after the *Storm* and his *Danger* (and so his fear) begun, his willingness to loose his Goods and save himself begun too; and as the *Danger* and his *Fear* increased, so proportionably his willingness to cast away his Goods; and when his *Danger* and *Fear* are

are come to the height, then, and not till then, he is absolutely willing to cast them into the *Sea*, and makes hast to put that will in Execution; being as really desirous and willing to loose his Goods, as by so doing to save his *Ship* and himself, so that if fear made our actions Involuntary, then the more the fear was they would be more Involuntary; whereas the contrary is evident, that as our fear increaseth, so our willingness to do those actions which proceed from it.

4. The fear and force *Gallina* pretends to make her contract with *Patrimoniale*; a Nullity, was from her own Father: It is pretended, her Father forc'd her to consent; whence it appears, that she had her Father's consent and command to marry him, and may be, many and severe Threatnings too, if she did not Marry him: Whether this was so, or not, I know not; but if it was so, yet this neither did, nor by any Law of

God or Man, could make her Matrimonial contract a Nullity. First, That any Law of God, Natural or Positive, should make the consent, command or threatnings of a Father sufficient to Null the consent, and matrimonial contract of his Daughter, neither is, nor can be pretended. Secondly, For humane Laws the Civilians and Canonists tell us, That the fear of a Father makes not the Marriage or Consent of his Daughter a Nullity. (a)

(a) Arnold. Vinnius Comment. in Institut. De nuptijs ad Textum, Qui possunt nuptias contrahere, 53. Fachim. a Beuff. De Jure connubiorum cap. 44. pag. 8. 6.

(b) Dionys. Gothofredus ad leg. Si Patre 22. F. De Ritu nuptiarum, & idem ad lib. 3. F. Quod metus causa, p.

Plane metus reverentialis, sive obsequium reverentiæ Paternæ debitum; matrimonium non impedit, uti nec Consensum. No not when the Daughter gives her consent (b) Père suadente, admodum urgente & hor tante. And the law it self tells us, That if a Father compell or force his Son to marry a Wife, there is the same reason for his Daughter
to

to marry a Husband, which otherwise he would not have Married; yet the marriage is valid, and (by reason of that force) no Nullity; (c) *si Filius Patre cogente ducit uxorem, quam non duceret, si sui arbitrij esset, contraxit tamen matrimonium, quod inter invitos non contrahitur, maluisse hoc videtur.* So that even according to Human, Civil, and Canon Laws, it is not all Co-action, force or fear from a Father which

(c) *Dicta lege. Si Patre 22. F. de Ritu nuptiarum. The Law saies, Quod vi, metusve causa gestum, ratum non est. But then it must be, vis atrox contra bonos mores, non eam quam magistratus intulit, l. 3. F. eod.*

makes the consent of a Daughter in a Matrimonial contract, invalid or Nullity; and therefore 'tis impertinently pretended for such in our present Case.

5. I confess, the Canonists and Civilians say, That fear makes the consent Involuntary, and so induces a Nullity. (d)

Locum non habet consensus, ubi metus vel co-actio intercedit, &c. So saies

(d) *Cap. Cum Locum I 4 extra De Sponsali & Matrimonis.*

that

that Law, and the Lawyers (e) consent and say further;

(e) *Panormitan. ad dictum cap. Vinnius, a Beute, Gothofredus, &c. Locis supra citatis.*

Quod Matrimonium per metum, vel minis contractum, deficiente consensu, est ipso jure nullum. But it is cer-

tain, first, That they do not mean a *Reverential Fear*, a fear of displeasing a Father; for the same Men, in the same places say, *That such a fear does not vitiate the consent*, or make a Nullity: Now all the fear pretended by *Gallina* (in our Case) was from her Father. Secondly, If the fear arise from the many and severe Threats of a Father, yet this cannot make the consent involuntary, and so a Nullity. I confess, that if a Father should Command and Threaten his Daughter to Marry an impious and unworthy Person, the (f) Law will warrant her disobedience;

(f) *Tum solum dis-*
sentiendi a Patre licen-

tia Filia conceditur, si indignum moribus, aut turpem sponsum ei Pater eligat, l. sed quæ 12. §. tunc autem F. De sponsalibus.

for in that Case she is

(a) not

(a) not by Law bound to obey her Father's commands or threatenings. But in our Case, no such indignity or incapacity of Patrimoniale's person is complain'd of, or so much as pretended for a cause why Gallina's consent should be involuntary, and the conjugal contract a Nullity.

(a) *Parentis consensus in nuptijs liberorum requiritur, ex reverentia parentis debita, nisi manifeste iniqua sit Parentis voluntas. Grotius de jure Belli lib. 2. cap. 5. § 10.*

Now if this be true, and the Law it self says it; That, *tum solum dissentiendi a Patre licentia Filiae conceditur, cum indignum moribus aut turpem sponsum ei Pater eligit.* If the Law allow a Daughter to disobey her Father's commands (proposing a Husband to her) only in such Case; then if he chuse and propose a Person better qualified, and no way unworthy of her, and give his consent and command, that she shall marry him (as the matter of Fact was in our Case) then she is bound to obey him. For if it be Lawful for a Daughter to disobey her Father, onely when he proposes

poses an unworthy Husband; then, when he proposes one worthy, she is bound to obey him. Seeing then the Husband propos'd to *Gallina*, by her Father was no way unworthy of her, but she bound (upon her Father's consent and command) to marry him, it follows, Thirdly, That her actual marrying him, upon her Father's command and fear to displease him, was an *act of filial Obedience and Duty*, and therefore could not possibly vitiate her consent, and make the conjugal contract involuntary, invalid, and, as pretended, a Nullity. Nay, Fourthly, 'tis certain that a Father hath a just Authority by the Law of God (b) and Nature, to consider and judge what is good for

(b) Exod. 20. 12.
Honour thy Father and
thy Mother, &c.

his Children, and not only to command their Obedience, but to use *Threats and Menaces*; yea, and *Castigations and Whippings* too, to make them do their Duty, and obey his just commands;

so

so our Heavenly Father commands us to obey his Laws, useth *Menaces*, threatens *Death* and *Damnation* if we do not; and these *Means* he has appointed, *Threatnings* as well as *Promises*, to make us willing to do what he commands, our Duty. And therefore to say, that such Paternal Commands and *Threatnings* (whether of our Heavenly or Earthly Parents) can be a just ground, to make our consents to such commands involuntary, which he has ordain'd to make us give a willing and voluntary Obedience, is to Blaspheme his infinitely wise Providence, and to say that the means which he has appointed to produce a willing and voluntary consent in us to obey his Commands and do our Duty, has a necessary and contrary effect, and makes them involuntary. So that it being granted that *Gallina's* Father commanded her to marry *Patrimoniale*, and to make her to do it, added many and severe *Threatnings*;
for

for (a) fear of which she did (and without them would not

(a) The Law
*saic, L. 2. F. Quod
 metus Cause, Quod vi,
 metusve causa gestum,
 ratum non est. But
 then it means, vim
 atrocem & contra bo-
 nos mores, non eam
 quam magistratus iuste
 intulit, Scilicet Jure
 licito honoris quem
 sustinet, li. 3. lb. non
 comminationem, neque
 alterius nudam Reve-
 rentiam. Gotofred. ad
 dictam legem. So that
 'tis evident, that the
 Menaces of a Father
 or Magistrate (who
 have Authority) do
 not cause any Nulli-
 ty, by Law, when
 what they command
 is, not illicitum or con-
 tra bono smores; as cer-
 tainly Gallina's Mar-
 riage with Patrimo-
 niale was not.*

have done it) marry
 him; this may prove,
 that (in those circum-
 stances, and to avoid her
 Father's displeasure) she
 willingly made that con-
 jugal contract; but nei-
 ther is, nor can be any
 ground to prove that her
 consent was involunta-
 ry, and so the contract
 invalid, as is pretended,
 and a Nullity. Fifthly,
 And this may further ap-
 pear, that such Actions
 are not involuntary, by
 the consent of Christen-
 dom, thus: In the Pri-
 mitive Church and times
 of Persecution, some
 Christians suffer'd Im-
 prisonment and many Torments, for
 their

their Religion; yet at last for fear of Death, threatned by their Pagan Persecutors, they offered Incense in the Idol Temple; and yet all those Imprisonments, Torments, and Threatnings of Death, did not make that act of theirs Involuntary, for then it had not been Sin; *peccatum utique non est peccatum nisi sit voluntarium*; and yet the Church and Christian World judg'd it to be a great Sin, and Ecclesiastical Punishments, and long Penances (b) were imposed on them for it, as appears by the Antient and approved Canons. Now if all these Sufferings and Fears of present Death, did not make their act of Sacrificing in a Pagan Temple Involuntary, then neither will the like, if any such had been, make Gallina's act of marrying in a Christian Church involuntary, nor consequently invalid and a Nullity. Sixthly, But let it be further granted,

(b) *Vid. Can. 24, 25, 26, &c. in Cod. Can. Eccl. Universe seu Concilij Ancyranj. Can. 4, 5, 6.*

granted, that *Gallina* was under very great force and fear from her Father, as is pretended; and that, that force and fear was of such a Nature and Degree, as the Canon and Civil Laws judge (c) sufficient, to make a conjugal contract invalid, and a Nullity. Yet

(c) What force and fear are sufficient, the Law tells us, *L. 1, 2, 3, &c. F. Quod metus causa gestum est, Gloss. & Gotofredi note ad dictas leges Tit. 20. Lib. 2. Cod. & Cap. 14, 15. 21. extra De sponsal. & matrimon. & cap. insuper 4. extra Qui matrimon. accus. possunt vel contra. The Gloss. & Panormitan ib. & L. interpositus 13. Cod. de Transactionibus.*

seeing (in this case) *Idem est non esse & non apparere*, till this do legally appear by just proofs; no judge can (at least none should) give sentence for a Nullity; nor can Mr. Cottington with any Security, Quiet or Peace of Conscience Co-habit with her, as with his legal Wife. And in this and such other Matrimo-

nial Cases of Nullity and Divorce, our Church requires, that the greatest Caution be used and all means possible, to find

find out the truth by deposition of Witnesses, and other lawful Proofs, but would have no credit given to the confession or oaths of the Parties. The words are these in our Canon : (a) We

straitly charge that in all Proceedings to Nullities of Matrimony, good circum-

(a) Constitutions and Canons Ecclesiast. 1 Jacobi 1603. Can. 105.

spection and advice be used,

and that so far as is possible, truth be sifted out by deposition of Witnesses and other lawfull Proofs, and that credit be not given to the sole confession of the Parties, however taken upon Oath, either within or without the Court. This is the

Law of England, for I believe a Canon made in Convocation, and confirm'd by the King's Supreme Authority, to be a (b)

Law, in re Ecclesiasticâ,

as well as an Act of Parliament is in re Civilis. And by this Law, no

Sentence of Nullity of a Matrimonial Contract,

(b) Statut. 25. H. 8. Cap. 19. Judge Vaughan's Reports, pag. 327. and pag. 21. and 132.

can legally be pronounc'd, till just and (c) legal Proofs be made, and (by the same Law) the Con-

(c) That just proofs are prerequird to a just Sentence, Reason and Law tell us. *L. Si donationis* 7. & *L. Metum* 9. *Cod. De his qua vi metusve causa gesta sunt*, & *L. Interpositus* 13. *Cod. De Transactionibus*.

fessions and Oaths of the Parties are no sufficient Proofs; so that in our present Case, if *Patrimoniale* and *Gallina* had both confessed and solemnly Sworn, that there was such force and fear (as is pretend-

ed to be the ground of that Nullity) yet by our Law, such Confessions and Oaths are no legal Proofs. Nor does it appear, that there were any other legal and sufficient Proofs of it, and therefore Mr. Cottington having no sufficient assurance or just ground to believe, either, First, That there really was any such pretended force and fear; or, Secondly, That such pretended, but not prov'd, force and fear, was a sufficient ground of a Nullity; for while no force did

did by legal Proofs appear, it was impossible to know the Nature, Degree and Measure of that pretended force, and so whether it was such as could cause a Nullity. I say Mr. Cottington having no sufficient certainty of these Particulars, he cannot with Innocence and a safe Conscience Co-habit with Gallina, as with his own Wife, seeing she may be, and (for ought appears to the contrary) is another Mans.

Lastly: But let it be granted (tho it appear not by any legal Evidence) that Gallina was under some force and fear, at the time of her Marriage; so that her consent was not so voluntary and free, as other wife is requir'd in such Contracts; yet 'tis evident and confessed, that she afterwards lived with her Husband a year and a half, had a Child by him, and all that while never made any protestation, or (a) com-

(a) Vid. L. Cum te.

2. Cod. De his quæ vi metusve causâ gesta

sunt, where 'tis resolv'd, that he who said he was compell'd to pay Money, and yet, *omissa Querela*, having ground for it, did not complain; *gestum præsumitur spontaneè factum, non metu.* Gotofred. ad dictam legem.

D 2

plain.

plaint of any such force or fear, or that her consent was involuntary, though she had all that time, and being in a safe place, many opportunities to have done it, which spontaneous and voluntary Co-habitation with her Husband, was a legal confirmation and ratification of her first consent; so that it was sufficient to make the conjugal contract valid, firm, and obligatory. This is an evident truth established by the *Civil and Canon Laws*, acknowledged by the best *Civilians* and *Canonists*, received and practised in their respective *Courts*. That this may appear, I say,

First, That a good *Canonist* (b) tells us,

(b) *Paul. Lancelot. Institut. Jur. Canon. l. 2. tit. 22. §. Coactio.* not obiter and casually, but in his institutions made and allowed by the Command and (c) Authority of

(c) *Institutiones in Aula Rom. Mandato Pont. max. ab illustrissimis viris recognite. So the Epigraphe.* the Pope himself; That if a Woman do prove that her conjugal consent was through fear,

at

at first involuntary; yet if afterwards, she willingly did Co-habit with her Husband, and he had Carnal knowledge of Her, the fear is Purg'd (though it was at first a just fear) and the Matrimonial contract valid and Obligatory. The words are these—*Quæ invita probat se sponsalia contraxisse, si comperiat postea sponte cognita ad matrimonii Dissolutionem proclamare & metum causare non poterit.* And the Lemma or Title of that Paragraph is this; *Iustus metus si purgatus fuerit, and Antecedentem metum spontanea copula ex post facto purgat, Matrimonium non impedit.* We see that a just fear, and that proved, makes no Nullity nor Invalidity, if afterwards she willingly consent to Carnal Knowledge, and give due benevolence to her Husband. But Gallina's fear, in our Case, was pretended only, not prov'd; she Co-habited with him willingly eighteen Months, and had a Child by him; and, *ergo*, much less could such pretended fear prove a Nullity.

D 3

Secondly,

Secondly, And the (d) Law it self expressly determines the

(d) Cap. Insuper 4.
extra Qui matrimoni-
um accusare possunt,
vel contra, &c.

Case, wherein the Lem-
ma prefixed to the
Chapter is this: *Invita*

*desponsata postea sponte
Cognita contra Matrimonium non auditur;*
and then the Pope determines the Case,
whether it was (e) Clemens or Celestine,

(e) Gregory the
9th. or his Chaplain
Raymond calls him
Clement the 3. *Loco
proxime citato*, and
Gratian calls him
Celestine. *Can. Videtur*
2. *Caus. 35. Que-*
st. 6.

I inquire not, *ipsi vide-*
rint, thus; *Adversus Mat-*
rimonium audiri non debet
que ante Cognitionem sui
cum potuit minime recla-
mavit, postquam enim copu-
la carnali semel consentit ex
Ratificatione sibi super hoc

silentium non ambigitur indixisse. Gallina
in our Case lived eighteen Months will-
ingly with her Husband, had a Child by
him, willingly I suppose, & cum potuit
minime reclamavit; and, ergo, à fortiori,
such her Spontaneous Co-habitation,
and Carnal Copulation, was a real
and

and legal Ratihabition and confirmati-
on of her consent and conjugal contract;
although it had been, which appears
not, at first, through force or fear, invo-
luntary. And that such a subsequent
spontaneous consent is sufficient to ra-
tifie an antecedent Contract suppos'd,
or really being involuntary, is justified
by the (a) Civil Law and best Civilians.
Nor does the Law re-

quite that such subse-
quent consent be gi-

(a) L. Si per vim.

4.Cod. De his Dque vi
metusve causa sunt, si

per vim vel metum mortis aut cruciatus corporis, venditio à vo-
bis extorta est: Et non postea eam consensu corroborastis, &c.

ven in express words, but a tacit con-
sent, by doing some act which signifies,
and gives a moral certainty of the inter-
nal willingness of the party, is sufficient.

Consensu etiam tacito (saies a most learn-

ed (b) Lawyer, and

(b) Dionys. Gotho-

proves it by express

sedus ad dictam legem,
l. it. p.

(c) Law) Ratihabitio ac-

(c) L. Cum te. 2. Cod.

tus, as he goes on; ante-

De his que vi metusve

cedentem actum metu ge-

Causa, &c.

bris

D 4

flum

*stum non fuisse demonstrat. Consensus gemi-
natio tollit metus Presumptionem.* So (d)

(d) Grotius de Jure
Belli, lib. 2. Cap. 11.
§. 27.

(e) Tractat. de Jure
Commubiorum, Cap. 44.
pag. 81.

Grotius, (e) Joach. à Benst,
Panormitan, and others
cited by them, and ge-
nerally all I have yet
seen.

Thirdly. Once more: The truth of
what I have said does further, and if
that be possible, more evidently appear
to be *res judicata & pro veritate habenda*.
For it is a Case in *Terminis*, and express-
ly determin'd by Pope Clement the Third,
who was a better Casuist and Judge if not
infallible; yet sure I am of far greater
Authority than the Archbishop of Tu-
rin: For Pope Agatho (if Gratian cite
him right) has told us, (f) That all

(f) *Sic omnes Apo-
police sedis sanctiones
accipiende sunt tanquam ipsius Divini Petri voce firmate. Can.
Sic omnes, 2. Dist. 19.*

the Popes Decretals are to
be received, as if the Di-

vine Authority of St. Peter had confirm'd
them. The Determination of Pope
Clement,

Mr. Cottington's Case.

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Clement, (g) which I mean was (by Gregory the Ninth) Regi-
fired and referred into
the body of the Canon
Law; where the Title

(g) Cap. Ad id ex-
tra De Sponsalibus &
Matrimonii.

or Summary prefix'd to the Chapter is
this; *Matrimonium per vim contractum,*
Co-habitatione spontanea, convalescit, hoc di-
cit, & quotidie allegatur; where we have,
first, the Law in this Position. A sub-
sequent spontaneous Co-habitation con-
firms a conjugal contract made by force
or fear. Secondly, The received and
common practice of it. It was no an-
tiquated Law, or abolish'd by any con-
trary Law or Desuetude. No, saies the
Summary, *Quotidie allegatur,* it was in
continual and daily use: Thus the Ti-
tle, The Popes Decision of the Case, follows
in the Chapter, so Parallel with our
present Case as nothing can be more;
Nec (a) ovum ovo simili-

(a) 1. The Woman
then pretended force and fear in the Contract, made her consent
involuntary, so does Gallina non

us. The Case then was thus; A Wo-

man was married un-
willingly, and her con-
2. The Woman then
desir'd, that for that
force and fear that conjugal Contract might be declared in-
valid and a Nullity; so does Gallina now.

sent involuntary, yet afterwards she li-
ved with her Husband a year and a half;
which Co-habitation was (by the Pope)
judged a confirmation and ratification
of the conjugal Contract, which was at
first Involuntary. The words are these--

*Femina quædam cuidam Teutonico Matrimonii-
aliter copulatur, quæ quamvis ab initio invita
fuisset ei tradita, & renitens; tamen
quia postmodum per annum*

3. The Woman then
after her contract, lived
& dimidium sibi Cohabi-
tationem willingly for a year and a half with her Husband without com-
plaining, or protestation of her unwillingness; so did Gallina.
tans, consensisse videtur, ad ipsum est cogen-
da redire; Nec de cætero recipiendi sunt

4. It was then
judged, and it was then
and still is Law, that the subsequent Co-habitation purged the
former fear, and ratifi'd the contract; and Gallina's Case and
the Law, being still the same, it should (de jure) have the
same Sentence.

non consenserit nominaverit producendos, cum mora tanti temporis hujusmodi probationem excludit; from which Sentence and Law it is evident,

First, That though the Womans Act was at first involuntary, yet her Co-habitation with her Husband (for a year and a half) ratifi'd and confirm'd the Matrimonial Contract; and therefore, in our Case, had *Galina's* consent been at first involuntary, (which is not proved) yet her Co-habitation with her Husband for a year and a half (especially having a Child in that time by him) did by the same Law ratifie the former, though involuntary contract.

Secondly, That by this Sentence and Law of the Pope, the Woman having liv'd with her Husband a year and a half, that Co-habitation had so confirm'd and ratified the conjugal contract, *ex post facto*, that although, *ab initio*, it were involuntary; yet that could

not cause any Nullity or Invalidity in the Marriage or Contract which made it. And therefore the Pope and the Law say, — *Qu'd Testes de cetero non sunt recipiendi, quia mora tanti temporis hujusmodi probationem excludit.* It was in the Pope's Judgment, against Reason and Law, after a spontaneous Co-habitation for a year and a half, to admit of Witnesses to prove that her consent was (at first) involuntary, in order to a Nullity of the Matrimonial Contract; seeing that being granted, it did not follow that there was any Nullity or Invalidity in the said Contract; and therefore the Pope truly judg'd, that it was impertinent to bring Witnesses to prove that, which (in that Case) was indeed granted; and otherwise, if it had been proved, could no way profit them: The subsequent spontaneous Co-habitation having abundantly ratified the Contract, and supplied the defects of the first involuntary consent. And hence,

hence, it farther follows, and (if I mistake not) evidently,

First, That the Sentence of the Archbishop of Turin (in Gallina's Case) was repugnant and directly contradictory to Law.

First, Because he admitted and examined no Witnesses which (in such case) the Law expressly forbids. Secondly, In that he by his definitive Sentence, judg'd and declared that to be a Nullity, which the establish'd, and, though may be not to him, the known Laws and the Pope too, had declared and judg'd to be none.

Secondly, That therefore that Sentence of the Archbishop (being against Law, and the definitive Sentence of the Supreme Judge) was absolutely and in it self (a) Null, to all intents and purposes.

(a) *Sententia dicitur nulla, quia lata est*

contra jus constitutionis, nulla vero non transit in rem judicatam. Panormitan. Judicarij Ordinis Processus. Forma Apostolorum, & sententia lata contra legem, vel ex juris errore, est ipso jure nulla. Commun. opinionum, Tom. 1. 51. Num. 11.

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Third.

44 Mr. Cottington's Case.

Thirdly, And then such sentence being (by the Laws Civil and Sacred) absolutely Null ; it follows, that the Matrimonial contract between *Patrimonia* and *Gallina*, was firm, valid and obligatory.

The premises considered, I think there is some Reason to believe, that no Court or consistory on Earth, can justly oblige Mr. Cottington to Co-habit with *Gallina*, the conjugal Contract with her former Husband remaining firm and valid. Yet if any should (*quod absit*) I am sure, he cannot possibly, with Innocence and a good Conscience, use her as a Wife. For seeing the Law and right reason tell us, that *illud solum possumus, quod* (b) *jure possumus*, it can be no more possible for him to Co-habit with her (with a good Conscience) than to lie with another Man's Wife, as *Gallina* certainly is, and commit Adultery. *Ita est*, T. Lincolne.

Query,

(b) *L. filius* 15.
ff. de condic. instituti-
onum.

Query. *Whether the Bishops of England have Power to question a Sentence of the Archbishop of Turin?*

My Honoured Friend,

I understand by your Letter, that some say (who they are, I neither know nor inquire) that the King and Bishops of England have no Power to Question the Archbishop of Turin's Sentence, given in the Case of Patrimoniale and Gallina. I confess, I do not a little wonder at the strangeness of their Position; the rather, because (having consulted very learned Divines and Lawyers,) I can find no ground for it. But, on the other side, many (to me) evident reasons to the contrary, which I submit to your Censure: *& si quid novisti rectius, candidus*

das imperti, and I will be your thankful Profelyte. Here then, I consider, that a Sentence of the Archbishop of Turin, may be either,

1. Such as concerns his own Subjects onely, over whom he has a just Authority and Jurisdiction.
2. Or, such as may concern one or more of the King of England's Subjects.

For the first I conceive it is certain, *First*, That the Archbishop of Turin, being (as to all his Subjects) a legal Superior, obedience is due to him. It being Law with them of Rome, (and I shall not deny it) that in (a) things lawfull, or dubious, the subject

(a) *In dubijs, standum est sententiae superiorum, maxime Pontificum. Fillucius Quæst. moral. Tractat. 10. c. 2. Quæst. 8. §. 55. Can. Quod culpatus. 4. Caus. 23. Quæst. 1. Et cap. Ad aures. 5. extra De Temp. ordinandorum.*

tence of his Superiours; they have no power

power to question or rescind his Sentence. Secondly, And 'tis granted, that the King and Bishops of *England*, neither have, nor pretend to have any power to question any Sentence of that Archbishop (which only concerns his own Subjects) so as to rescind, make it Null, or not Obligatory. For that cannot be done, save by a power Superior to that of the Archbishop ; such as neither the King nor the Bishops of *England* pretend to. Thirdly, But I think it as certain, that the King and Bishops of *England*, may question any Sentence of the Archbishop of *Turin*, or the Pope himself, so far, as to consider and examine the Truth or Justice of it (when there is a just occasion, and our King or his Subjects concern'd) and approve or condemn, admit or reject it, when and so far as (all circumstances considered) they find it just and true, or otherwise, as shall (God willing) anon appear. But of such Sentences, I suppose, the present Query is not. E *Second*

Secondly, But the question principally is concerning such Sentence, wherein a Subject of England is concern'd, (as in Mr. Cottington's Case) who owes Loyalty and Subjection to his King, and may expect protection from him. Now in this case, the Archbishop's Sentence might either be;

1. For Co-habitation, requiring Mr. Cottington to Co-habit with Gallina, to give her due Benevolence and Maintenance.
2. Or, only to declare a Nullity of the Matrimonial Contract between *Patrimoniale* and Gallina.

For the first, If the Archbishop's Sentence was such as required Co-habitation, that Mr. Cottington should give due Benevolence and Maintenance to Gallina: Then his Sentence was absolutely Null, *Quia à non iudice lata*, (that Archbishop having no Jurisdiction over Mr.

Mr. Cottington) and an usurpation of the just Rights of our King, the Supreme, and of our Bishops who (from and under him) have a sub-ordinate Jurisdiction over the Subjects of *England*, and so over Mr. Cottington. Sure I am, the Archbishop of *Turin* had no Jurisdiction over Mr. Cottington, a subject of the King of *England*. First, Not Supreme; that's only in our King, as our Laws and Oaths testifie. Secondly, Not Subordinate; for that must be derived from the King, who surely never gave the Archbishop of *Turin* any Jurisdiction over Mr. Cottington, or any of his Subjects. And therefore, if the Archbishop of *Turin*'s Sentence was such, our King and Bishops might justly question and censure it, for what it was, a Nullity, and an illegal usurpation of the Rights of the Church of *England*.

For the second, If the Archbishop of *Turin*'s Sentence was only, that the Matrimonial Contract between *Patrimoniale*.

and Gallina, was a Nullity; then I consider,

First, That it is confess'd, that Res

(a) *Leg. Res judicata* 207. *F. De Regulis juris.*

* *Bronchorst. ad diam legem.*

(a) *judicata pro veritate accipitur*, and the Sentence may be put in Execution; * *Si sententia judicis, appellatione nulla*

suspensa sit, nec ex alia causa potest restaurari. But this must be understood in re-

(b) *L. Eleganter* 23. § *Si quis post. F. De condic. Indeb.*

(c) *Habetur pro veritate inter litigantes.* *Gloss. ad dictam Regul. 207. Card. Tuschus Concl. Pract. Juris, lit. R. Concl. 267. Num. 57.*

(d) *Abb. Conf. 73. Videtur primo Col. 2. In princ. v. primo contra eum l. 1.*

spect of the Parties litigant, (b) *Facit jus intractabile inter partes*, saies the Law and (c) Lawyers. And they add, (d) *Sententia a qua non est appellatum, facit jus inter partes, etiamsi ab initio sit injusta.*

Secondly, But yet this Rule has several limitations and fallencie, as they call them;

(e) *L. 2. Cod. Quando provoc. non est necess.*

for (e) *Si sententia judicis sit ipso jure nulla, &*

contra jus lata, tum sine ap-
pellatione infringitur, &
non transit in rem judica-
tam. And a good Law-

yer, with relation to the Laws cited in
the Margin, tells me (f)

*His legibus dicitur, quod
sententia lata contra leges,
statuta, vel constitutiones*

*principum, est ipso jure nulla, & ideo citra ap-
pellationem, causa de novo in judicium deduci*

potest. And Panormitan(g)

*sententia pro Matrimonio,
non transit in rem judica-*

tam, cum extat impedimen-

tum lege divinâ vel huma-

nâ, & super eo non est dis-

pensatum. So that it is

*not every Sentence of a
Judge (though not sus-*

*pending by an appeal)
which passes in rem judi-*

*cata, no not in the
same State or Kingdom;*

*L. Si expressim. 19.
F. de Appell. & Leg.
Eum prolatis. 32. F. De
re judicata.*

*(f) Ever. Bronchorst.
ad l. 207. F. de Reg.
juris.*

*(g) Abb. Conf. 60.
in casu. Col. 1. in fin.
l. 2. Card. Tschus lo-
co citato. §. 27. And
it is a memorable say-
ing of Ulpian to this
purpose. Condemna-
tum accipere debemus
illum, qui ritè con-
demnatus est, ut sen-
tentia valeat: Nam si
aliqua ratione senten-
tia nulla sit, dicendum
est, condemnationis ver-
bum non tenere. L. 4.
§. Condemnatum. 6. F.
De re judicata.*

and therefore the Archbishop of Turin's Sentence, declaring the Matrimonial Contract between Patrimoniale and Galina, to be a Nullity, if it be against any Law of God, or Man; as undeniably it is against both; if the grounds on which it was given, be (a) such as they have been represented

(a) *Ea quæ contra leges sunt, non solum inutilia, sed pro infectis habenda. Can. Imperial 13. Caus. 25. Quæst. 2. Rescripta contra jus elicitum, ab omnibus Judicibus præcipimus refutari. Ib. Can. 75. Ita statuunt Imp. Theodofius, & Valent. leg. Rescript. 7. Cod. De Precibus Imperat. conferendis, &c.*

to me, is it self Null, and to all intents and purposes invalid.

Thirdly, But let the Archbishop's Sentence, as to the Nullity, be what it will, true or false, just or unjust; yet if it concerns a Subject of England, our King and Bishops have good reason, and a just power to question and examine it; and according to its Validity or Nullity, admit or reject it.

Fourthly, And that it does highly concern a Subject of England, is evident. For although

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although *ab Origine*, it concern'd only *Patrimoniale* and *Gallina*, two of his own *Subjects*; yet Mr. Cottington having before, or since the Sentence, I know not, married *Gallina*: He is highly concern'd to be sure, that the Archbishop's Sentence is just and true. For if it be not, if indeed there be no Nullity in that Contract, then what Casuist or Court soever determines and decrees, that he shall Co-habit with *Gallina* as his Wife; does (*ipso facto*) decree,

1. That he shall Co-habit with another Man's Wife.
2. That he shall live in continual Adultery.
3. That if he have any Children by her, they are none of his; for, *is pater est, quem nuptiæ demonstrant.*
4. And so in case she out-live him, he shall not be in a possibility, to leave any lawfull Issue to continue his Name and Family to Posterity.

Fifthly, If then the Archbishop's Sentence be untrue, if the contract between *Patrimoniale* and *Gallina*, was *Matrimonium ratum*, and no Nullity; then all those sad or sinful consequences, will necessarily follow; and so not only Mr. Cottington, by Co-habiting with another Man's Wife, but his Judges too, who command such Co-habitation, will be guilty of those horrid Impieties. For if it be true, as undoubtedly it is, that the Ma-

(a) *Qui non prohibet peccare cum possit, jubet.* So 1 Sam. 3. 13. *Eli* is declared guilty of his Sons impieties, because he restrain'd them not.

gistrate who (a) prohibits not Impieties, when 'tis in his power, is himself guilty of them: Then much more will he be guilty, who expressly commands them. And that Magistrate, whoever he be, who by a judicial Sentence, commands Mr. Cottington to Co-habit with another Man's Wife, for so she is, in case there be no Nullity, commands him to commit and continue in *Adultery*.

Sixthly,

Sixthly, It will therefore, both in Prudence and Conscience, highly concern our Bishops and Ecclesiastical Judges, to whom the cognizance of this cause belongs, that they be (b) morally sure, that the Contract between *Patrimoniale* and *Gallina* was indeed a Nullity, before they decree and require Mr. Cottington to Co-habit with her. It is evidently repugnant to the nature of Justice, and the integrity of a just Judge, to give a certain damnatory Sentence, upon an uncertain and dubious Ground. Now 'tis absolutely impossible, that any Man should be sure of such a Nullity as is declared in the Archbishop's Sentence, unless he know the reasons on which that Sentence is grounded, and that they are such, as efficaciously prove the Nullity: And if

(b) As a Subject may not disobey his Superior unless he be morally sure that what he commands is illicit and sinful; so a Superiour may not command, unless he be morally sure, that what he commands is licit and not sinful. *Vid. Res. Lincoln. de obligat. Conf. Præf. 68 § 16. pag. 227.*

Mr.

Mr. Cottington doubt of the Nullity (as of necessity he must, till by some rational medium it appear) and be not sure, *Gallina* is indeed his Wife; I am sure he sins, if he Co-habit with her, seeing he Co-habits with one, who (for ought he knows) is another Man's Wife. And then the Rule is certain, *Quicquid fit, reluctante vel (a) dubitante*

(a) Rom. 14. 23. *conscientiâ, est peccatum.*
Quod dubitas ne feceris. Cicero. Whatever is not of Faith is Sin, saies the Apostle. *Ex fide, id est, ex credulitate & fiducia conscientie de eo quod agit, quod licitum sit id agere.* Pererius Jesuita, in Rom. 14. Disp. 8. §. 45. pag. 1177. And what Pererius calls, *Credulitas* and *Fiducia Conscientiæ*; *Estius* calls *Moralis Estimatio*, &c. A Moral assurance, that what is done, is lawful. *Estius* in Rom. 14. 23.

Seventhly, If it be said, That the Archbishop of *Turin* has, by a judicial Sentence, declared that Contract to be a Nullity. It is confessed, but that is no just ground for Mr. Cottington, nor any body else, to be assured it is so, unless the Reasons on which his Sentence is grounded, appear to be cogent, and sufficient

to prove such Nullity. That Arch-
shop and his Assessors, neither are, nor
pretend to be Infallible, and the Sentence
of a fallible Authority, (so long as the
Reasons of it are unknown) is not suf-
ficient to satisfy and quiet a doubting
Conscience. Our Holy Mother (the
Church of England) has truly told us,
and all her Sons subscribe it, that Gene-

ral (b) Councils may
and have actually erred,

(b) *Art. Religionis,*
21.

much more may a par-
ticular *Popish Consistory*. I know it pas-
ses for good *Law* and *Divinity*, among
the *Popish Casuists* and *Schoolmen*, that the
People are bound to believe their Bi-
shop, even then, when he preaches *He-*
resie: And are so far from sinning in do-
ing so, that their submission to the Bi-
shop, and believing errors, when taught
by him, is Meritorious. It is a Cardi-
nal who tells us, --- (c)

(c) *Card. Tolet. In-*
struct. Sacerdotum, lib.
4. cap. 3. §. 7 pag. 612.
Reithemagi, 1630.

Si rusticus circa Articulos
fidei credat suo Episcopo,

pro-

proponenti aliquod dogma Hereticum, meretur in Credendo licet sit Error; quia tenetur credere, donec ei constat esse contra Ecclesiam. And before him,

(d) Rob. Holcot in lib. 1. Sententiarum. Quæst. 1. Ad sextum principale, in Replic.

our (d) Countryman, and he a famous Schoolman, tells us, to the same wild purpose; --- Si au-

diat prelatum prædicantem propositionem erroneam quam nescit esse erroneam, & credat ei, non peccat, sed tenetur errare, quia tenetur ei credere. & meretur volendo credere errorem, & tum simplicitas & ignorantia excusant. Nay, such an ignorant person (believing an Error, which the Bishop has preached and proposed as a Truth and Article of Faith) if he be put to Death, and die in defence of that Error, which he believes to be an Article of Faith, he shall be a Martyr and have the honour and merit of Martyrdom.

(a) Holcot Ib. in dicta Replicâ. The errors of the Church of Rome are many

(a) Concedo, si interficiatur pro tali errore, quem credit esse articulum fidei,

fidei, potest adipisci meritum debitum martyri, quia error invincibilis non dimittit de merito. But however, this anciently did, and at Rome still does pass for Catholick Doctrine, with the Pope and his miserably enslaved Party; yet the Church of England, and all her true Sons, believe and know it to be a prodigious and stupid Error.

Bitautin: Cap. Quante. 47. Verbo interpretans in Glessa Extra de sententia excommunicationis.

Eightly, That our King and Bishops, have power to question that Archbishop's, or any such Sentence; and when our King or his Subjects are concern'd, if upon a just Examination, they find it for want of Truth or Justice faulty, they may justly condemn and reject

and great, and therefore it is their Interest to keep the People Ignorant, least they come to know and abhor them. And on this ground, they teach this irrational Doctrine, That the People may and ought to believe even those errors their Priest and Pastor Preaches. For tho' this be irrational, yet 'tis in favour of their false Religion: And so 'tis true which their Canon Law, saies, *Favore religionis multa contra rationem con-*

ject it. This is, I believe, evident : For our Kings and Church of *England* (*de facto & jure*) have question'd, condemn'd and rejected Sentences of greater Popish Consistories, than that of the Archbishop of *Turin* ; I mean, Sentences given by the Pope himself, in his own Consistory, and his general Councils : Of this we have a hundred Instances. I shall for your satisfaction set down three or four ; thus.

First, Pope *Julius* the Second, *Ex plenitudine potestatis, & certâ scientiâ, &c.* Grants a Dispensation for *Hen. 8th.* to marry the Relict of his Brother *Arthur*, and declares the Marriage to be just and lawfull ; and yet *Hen. 8th.* and his Bishops (b) did and justly

(b) *Canterbury, London, Winton, Bath, Lincoln, and by the King's command at Dunstable. Vid. My Lord Cherbury's Life of Hen. 8. pag. 347.*

might afterwards examine the Papal Sentence, disobey'd it, and declared it Null.

where you have the Sentence of our Bishops, &c.

Secondly,

Secondly, Pope Paul the Third, (*Venerabilium fratrum Cardinalium consilio & consensu*) gives Sentence and declares for a general Council, and by his Bulls summons it to meet at (a)

Mantua, then at (b) *Vincenia*, and then at (c) *Trent*. But *Hen.* the 8th.

and his Bishops and Parliament, having seen

those Bulls, containing the Pope's Sentence and (d) Decree for,

and Summons of a general Council, at several times, and to several

places; they did not only question his Sen-

tence and Summons,

but condemned (though they were Papists) and

absolutely rejected it, shewing the many Nullities of that Summons, and ad-

ded their Protestation which they made good, that they were neither bound nor

would

(a) To meet there, *Cal. Jan. 1537.*

(b) *Vincenia*, *Cal. Maij, 1538.*

(c) *Trident.* *Cal. Nov. 1542.*

(d) *Autoritate Petri & Pauli, de Fratrum nostrorum 5. Rom. E. Can. Consilio & assensu gen. concilium incipiendum, &c. statuimus, decernimus. Ita habet Bulla Pauli, 3. in Bullario Clerubim. Tom. 1. pag. 550. §. 10.*

would obey it ; as is evident by an Epistle (e) of *Hen. the 8th.* to the Emperor and all Christian Kings ; and in a (f) Tract containing the Sentence of the King and Parliament, and their Protestation against the Pope's Sentence, for, and Summons to, that Council.

(e) *Sereniss. & inclyti Regis Hen. 8. Epistola de Synodo Vincentina, 1539.*

(f) *Illustriss. ac potentiss. Regis Hen. 8. Senatus populiq. Angliæ sententia, &c. de concilio quod Paulus Papa 3. Mantue futurum simulavit, & de Bulla que prorogavit. Edit. 1537.*

Thirdly, When that *Trent Council* had met and sat eighteen Years, made many Canons and Constitutions, particularly about Matrimony, and pronounced many Anathema's against all who did not believe and obey them : The Bishops of *England* were so far from thinking, that they had no power to question those Synodical Sentences and Constitutions ; that they have constantly and publicly Preach'd and Writ against them, and proved them to be, in many

many things erroneous, impious or idolatrous. Have the Bishops of England power to question and condemn the constitutions and synodical Decrees of the Pope, made in his own consistory, and his general Councils; and have they no power to question one single Sentence given in a consistory of an inferior Archbishop? *Credat Judæus Appella.*

Fourthly, Pope Paul the Third, (a) *Habitâ cum Cardinalibus deliberatione maturâ, & de illorum consilio & assensu*, (by a solemn Sentence)

(a) *Paulus 3. Bulla 7. Dat. Romæ, 3. Cal. Sep. 1535. in Bullario Cherubim. Rom. 1638. Tom. 1. pag. 514.*

Excommunicates Hen. 8. Deposés him, absolves his Subjects from their Oaths of Fidelity, &c. So (b) Pope

(b) *Pius 5. Bulla 101. In Bullario dicto, Tom. 2. pag. 229.*

Pius 5. sub eadem formâ, Excommunicates and

deposés Queen Elizabeth. And when some honest and loyal Papists had (under their hands) signified their (b) opinion.

(c) *Anno 1648. Vid. Remonst. Hiberno-*

rum Authore R. Caron.
Part. 1. cap. 4. § 3.
pag. 12.

1. That the Pope could not absolve Papists from their Oath of Allegiance to a Protestant King. 2. That he could not Depose and Murder Excommunicate Kings, &c. I say, when this was heard at Rome, Pope Innocent the 10th. with his *Sacra Cardinalium Congregatio*, passes a damnatory Sentence, and condemns the true opinion of those loyal Papists, as heretical: & declarat subscriptores; in penas in sacris Canonibus & Constitutionibus Apostolicis, contranegantes potestatem Papæ in causis fidei, incidisse. Now 'pray' ask those Gentlemen, whether the Bishops of England, have not power to question the aforesaid Solemn and Judicial Sentences of the

(d) Sure I am, that the incomparable Bishop *Jewel*, has a very loyal and learned Tract, wherein he fully shews the manifold Nullities and Impieties of Pope

(d) Popes, for excommunicating, deposing, and murdering Kings? If they have such power, and may question the Pope's judicial Sentences,

tences, given in his own Consistory, or his General Councils; then certainly, they may much rather question Sentences past in any Archbishop's or inferior Consistory. But if they say, what I suppose they will not, I am sure they should not, That we have not power to question such Sentences; they must pardon my incredulity, if I neither do nor can believe them to be Protestants or true Sons of the Church of England, but rather Jesuited Papists; for I know none (save (a) such) who do

or dare say, That such impious and traitorous Sentences given by the Pope in his Consistory, or Councils, may not be question'd by any Authority in the Church of England. Is it pos-

Pius 5. his Bull of Excommunication against Queen Elizabeth. It is extant, at the end of his reply to Harding's Answer. Inter ejus opera, Lon. 1609.

(a) *Campion the Jesuite, (a Traitor to the Queen and his Country) in his examination, said, for himself and his Society, That no Court in England had any power to question Pontificis Romani summam auctoritatem. Vid.*

Tractatum de Torturis, in Calce Justitiæ Britannicæ. Lond. 1584. and the Pope's Parasites, the Canonists, are of the same opinion. *Can. Si Papa.* 6. *Dist.* 40.

sible, that any Protestant, nay, any honest Papist, should seriously think, that a Sentence of the Pope to depose a King and absolve his Subjects from all Fidelity and Allegiance to him, should be such as is not to be question'd by the King, his Bishops, or any loyal Subjects? If so, good night to Monarchy, and all the royal Rights of Kings; the Pope may when he will depose and deprive them of all their *Jura Regalia*, and their Subjects (though by the Law of God and Man obliged to it) must not assist them.

Ninthly, It is to be considered, That our present Case is an Ecclesiastical, not a Civil Cause, concerning the Validity or Nullity of a Matrimonial Con-

(b) *Vid. Statut.* 24. Hen. 8. *Cap.* 12.

(c) *Concil. Trident. sess.* 24. *De Sacrament.*

tract; which both by (b) our Laws, and those of (c) Rome too,

is

is of Ecclesiastical Cognizance. Now there is (both in Law, and the nature and the consequences of them) a

Matrimonij. Can. 12. Qui dicit Causas matrimoniales non spectare ad iudices Ecclesiasticos, Anathema sit.

great difference between Ecclesiastical, and Civil Causes. Many instances might be given, but being not my business, I shall only set down two or three; thus:

First, Had it been an action of Debt, and the Sentence at *Turin* had been, that Mr. Cottington should pay 500 l. to *Gallina*. Admit also, that no such Debt was due, and so the Sentence unjust; and admit, that at *Gallina's* instance, that Sentence had been confirmed, and executed here in *England*, and Mr. Cottington compelled to pay that Summ. It might be a peice of injustice, and a sin in the (a) Judge to sentence him to pay what was no way due.

(a) *Si praelatus iniquum aut durum (quod tamen turpe aut inhoneustum non est) impetret, & subditus obsequatur, & imperatum*

But (as to Mr. Cotting-

faciat, tum unius Imperantis culpa est; tam abest à culpa qui obsequitur imperio, ut omnino peccaret si non obsequeretur. Rob. Lincolnienſis, de obligat. Conſcient. Prælect. 5. § 8. pag. 165.

ton) it might be his Calamity, being compell'd to pay what he did not owe, but his crime it could not be. It could be no ſin in him, compell'd by his Judge, to pay that Money, though indeed it was not due. For he might lawfully have given *Gallina* ſo much Money, without and before any compulſory decree; and that decree could not make it to him unlawful. But in our preſent Matrimonial Caſe, it is far otherwiſe: For if there was no Nullity in the Contract, and the Sentence at *Turin* unjuſt, and if upon that Sentence, it be decreed here, that Mr. *Cottington* ſhall Co-habit with *Gallina*, here obedience to that unjuſt Sentence, will not only be his Calamity, but his Crime; becauſe in this Caſe, he Co-habits with another Man's Wife, and is guilty of Adultery. Nor will the Judge's Sentence, requiring ſuch Co-habitation, any

any way excuse him. And on this consideration it highly concerns the Judges in this case to be assured of the Nullity, least they sentence Mr. Cottington to Cohabit with another Man's Wife, and so to sin and commit Adultery. But if they do, *quod absit*, it as highly concerns Mr. Cottington, to obey God rather than Men; and though he suffer for it here, rather disobey an unjust Sentence of an earthly Judge, than the eternally just Judge of Heaven and Earth, and suffer for it for ever hereafter.

Secondly, The Church of Rome has Ecclesiastical Laws, particularly about the Validity and Nullity of Matrimonial Contracts, which neither are nor ought to be approved by the Church of England. For, 1. They admit the Oaths and Confessions of the parties desiring Sentence for divorce or Nullity, and so it was in our present case, which the Church of England (a) admits

(a) *Vid. Canones 1 Jacobi. Anno 1623. Can. 105.*

not. 2. It is their generally received opinion, that although the *Matrimonium* be indeed *ratum*, yet a *Papal Dispensation* may dissolve the *vinculum conjugale*, and so induce a Nullity. Dico, saies a great

(b) *Vincent. Fillucius*, *Quest. Moral. Tractat. 10. Cap. 2. Quest. 8. §. 54, 55. pag. 152.*

who (*de facto*)

(c) *Ib. §. 55.* And the Trent Fathers tell us, That the Church may dispense with the Law of God in *Levit. 18.* And those degrees of Affinity or Consanguinity, *Quae impediunt Matrimonium contrahendum & dirimunt contractum.* And pronounces an *Anathema* to those who shall say the Church cannot constitute new impediments to dissolve

Popish (b) Casuist, *Matrimonium ratum posse dissolvi per Papæ dispensationem.* And for Proof

of it, he cites five Popes did dispense with such Marriages; and then adds, (c) *Quod Gregorius Papa 13 Unica die, cum undecim Matrimonijs ratis dispensavit.* And further tells us out of *Sanchez*, of no less than fourty nine Divines, Canonists, Summists, &c. cited for the same opinion, (and he might have cited as many more;) and then he himself

self from their own received Principles fully proves it. Now it highly concerns Mr. Cottington, and his Judges too, to know on what grounds the Archbishop of Turin gave Sentence for a Nullity. For

Marriages. *Qui dicit Ecclesiam non posse constitutare impedimenta Matrimonium discriminantia, Anathema sit.* Concil. Trident. Sess. 24. De matrimonio. Can. 3, 4. And shall we not question the Sentences of such Judges, who determine cases by such Laws?

if it was only on the aforesaid Reasons and Popish Principles; no Bishop or knowing Casuist of the Church of England, will or can admit that Sentence to be just, or grant a Nullity on such Grounds, or sentence Mr. Cottington to Co-habit with *Gallina*, her former Husband yet living, and no just ground of any Nullity in their Matrimonial Contract appearing.

Thirdly, The Laws of England concerning all Ecclesiastical, particularly Matrimonial Causes, are (a)

Express, forbidding all persons whoever they

(a) *Vid. Statut. 24 Hen. 8. Cap. 12.*

be,

be, inhabiting or resiant in this Kingdom, to make use of or excuse the Judgments or Sentences of any Foreign Person, Court or Judicature; and requires, upon pain of a *Præmunire*, that all such Causes be tryed and finally determin'd within this Realm, by our own Laws and Judges. The words

(b) The said Statute §. *Be it further enacted,* compared with the 2. §. *And whereas the King.*

are thus, (b) *If any Person, Inhabitant or Resiant in this Realm, or any other of what condition soever, at any time hereafter, for any of the Causes aforesaid, (Matrimonial causes are expressly forenamed) do procure from Rome, or any other Foreign Court out of this Realm, any manner of Foreign Process, Sentences, or Judgments of what kind soever, or execute any of the same, or do any Act, &c. such persons shall incur a Præmunire.* I understand not Law, and therefore refer this to you, and those who do: Only I observe, 1. That the Word in the Statute is not Copulative; *If any Man do Procure,*

cure, and Execute, and do any Act, &c. but Disjunctive, *If any Man Procure, or Execute, or do any Act, &c.* That is, if any Man do any one of those particulars mention'd; if he either procure such Foreign Sentences, or Execute, or Abett and Assist, &c. Though he do not all, yet he is liable to the punishment appointed by the Statute. 2. That the end of the Statute is, to provide against the damages and greivances of the Subjects of England; and therefore forbids all Appeals to any Foreign Court, Prelate or the Pope; or to bring in any Foreign Process, Sentence or Judgment given in any Foreign Court whatsoever. And this is one reason of the Prohibition, which the Statute doth instance

in; because (a) neither the necessary proofs nor the true knowledge of the Cause, can neither there be so well known, nor the Witnesses there be so well examin'd as within the Realm; so
that

(a) Statute. 24. H. 8. Cap. 12. §. 2. And whereas the King.

that the parties grieved by means of the said Appeals, be most times without remedy. So that though the Title and Epigraphe of the *Statute* be against Appeals to any Foreign Judicature; yet in the body of the *Statute* the bringing in, and executing of any Foreign Process, Sentence, or Judgment, are equally forbid.

Thirdly, Now for *Gallina*, no Subject of *England*, though now resiant here, to bring in a Sentence of a Foreign Court, and though the Proofs or Reasons of it be utterly unknown, to plead it, and have it, without Examination, executed, to the Irreparable damage of a Person of Quality, and a native Subject of *England*; this seems to me, to be against the true intent and meaning of this good *Statute*.

To conclude, I do and must confess, that of the Laws, I have ventur'd to cite, Law being none of my Profession, I am no competent Judge; and therefore,
begging

Mr. Cottington's Case. 75

begging your Pardon for my mistakes, and meddling with them, I referr them, and my self, to You and the *Learned* Gentlemen of the *Long Robe*, who best understand them, who can, I know, easily discover my mistakes ; and will, I hope, without any severe Censure pardon them. But for the Theological part of the Controversie, and the Case of Conscience, wherein his Judges in the Ecclesiastical Court, and Mr. Cottington are concern'd ; this being within the compass of my Calling and Profession, I may, and with modesty, and more confidence, do affirm, 1. That till the pretended Nullity of the Matrimonial Contract, between *Patrimoniale* and *Gallina*, do upon just grounds, and such as may induce a moral certainty, appear, no Judge can (*Conscientiâ & Justitiâ salvâ*) by a judicial Sentence, require Mr. Cottington to Co-habit with *Gallina*. For in this Case, *idem est non esse & non apparere* ; *Gallina* must be reputed *Patrimoniale's*

le's Wife, he yet living to whom she was first contracted (*Solemni Ecclesiae ritu*) and with whom she Co-habited (*sine querelâ*) a year and an half, and by whom she had a Child. I say, she must be reputed his Wife till it appear she is not. And 'tis impossible that should appear, till the Nullity of that first contract be legally and sufficiently proved.

2. And if any Ecclesiastical Judge, should decree Mr. Cottington to Co-habit with her, before such Nullity (which is pretended, but hitherto no way proved) do sufficiently and by legal and just proofs appear; yet, notwithstanding such Decree, 'tis impossible for him, with a safe Conscience, to Co-habit with her, as his Wife: Seeing, for ought appears, or he knows, she may be another's Man's Wife rather than his. And certainly he is highly concern'd to be sure, that she is indeed his own Wife, before he give her that due Benevolence, which without great Impiety and Adultery,

Mr. Cottington's Case. 77

Adultery, cannot possibly be given to any other, who really is not his Wife, &c.

Your Servant.

T. Lincolne.

P*Atrimoniale* and *Gallina* intermarry Anno 1664. and Co-habit about twenty Months, and have Issue, a Daughter. But *Gallina* afterwards not liking that Marriage, pretends it was Null, *propter vim & metum*, and obtains a Sentence of Nullity from the Archbishop of Turin; but without any defence, for ought appears, made by her Husband *Patrimoniales*, or proof of the pretended force or fear: And in the said Sentence of that Archbishop, there is a Condition interposed in these Words, *viz.* Saving however the solemnity required by the Holy Council, and a solemn Oath to be before-hand taken before Us by the said

78 *Mr. Cottington's Case.*

said *Gallina*, that she contracted the said Marriage, on force and for fear of her Father, and that she gave not her free consent unto the said Marriage; and by the Certificate annext to the Archbishop's Sentence, it appears that she Swore, That by the force and fear, that she was put into by her Father, she contracted Marriage with *Patrimoniale*, and that in that Contract, she did not give her free consent; but does not swear that she gave not her consent to the said Marriage.

Patrimoniale afterwards marry'd another Wife, and *Gallina* being thus separated, doth in the Year 1671. marry Mr. *Cottington*; against whom in the Year 1674. she brings an Action in *Causa Matrimoniali*, before the Dean of the Arches here in *England*, where she doth Alledge and prove her Marriage with Mr. *Cottington*; to which Mr. *Cottington* doth answer, That her first Husband *Patrimoniale* was and is still alive. She replies, 'tis true, but that first Marriage of hers was
de-

declared Null and Void by the Archbishop's Sentence; and Mr. Cottington rejoins, That that Sentence it self was Null and Void, being given without proof, and contrary to Law. The Dean of the Arches having this Fact before him, doth give Sentence for this second Marriage of *Gallina*, and enjoins Mr. Cottington and her to Co-habit; alledging that he hath no power, and is not by Law to examine or question the Validity of the Archbishop's Sentence; but ought, notwithstanding any Defects or Nullities therein, to give Sentence for this second Marriage of *Gallina*. Mr. Cottington sayeth, That the Dean of the Arches at the time of his giving Sentence against him, declared his Mind in Words to this effect, viz. As a private Man, I should look upon the Sentence of the Archbishop of *Turin*, for dissolving the Marriage between *Patrimoniale* and *Gallina*, to be an irregular, wrongful, and an unjust Sentence; but, as I am a publick Minister,

G

I must

I must look upon it as good against Mr. Cottington, because all Sentences given beyond Sea by any equal Court, I ought to look upon as good; whether good or bad, having no power to reverse or examine them; and therefore ought to cast Mr. Cottington in this Case.

It is not on Mr. Cottington's part denyed, but that when he Married *Gallina*, he knew of her being Married to *Patrimoniale*, and of *Patrimoniale's* being still alive, when he the said Cottington marry'd *Gallina*; nor is it alledged and proved by *Gallina* in this Cause here in *England*, that she at any time made any Protestation of the pretended force and fear she was under, or that she used any endeavours to escape from *Patrimoniale*, when she was in a safe place, and might have escaped from him if she had pleased; but on the contrary, her Co-habitation with *Patrimoniale* for about twenty Months, and her having had a Child by him in that time, and her having the usual

usual liberty of Women in a Married Estate, during that Co-habitation, hath been proved in the Court of Arches by her own Witnesses. But Mr. Cottington, being unwilling to make unnecessary contests with the Sentences of Courts, and being now fearful of offending God or his own Conscience, doth most humbly request the Reverend Doctor, *Richard Allestry*, the *Regius* Professor of Divinity, in the University of Oxford, to give him his Opinion, whether the matter of Fact, being true according to the Premises, he the said Cottington may *Salva Conscientia*, Co-habit with *Gallina* as his Wife.

Supposing this Case justly stated, and the matters of Fact true according to the Premises; I conceive the marriage of *Patrimoniale* and *Gallina* (especially being ratified by such Co-habitation, and the effects of it) valid and firm. And consequently, notwithstanding any Sentence of Nullity, that she is his Wife,

and therefore that no other person can
Co-habit with her, *Salva Conscientia*,
as with a Wife.

October 11th.

1677.

Richard Allestry.

MR. Cottington having desired the
Opinion of Dr. Hall, the Lady
Margaret's Professor of Divinity in Ox-
ford, to the same case propounded to him,
as was to Dr. Allestry, the *Regius* Profes-
sor there; Dr. Hall gave his Opinion
thereupon as followeth, viz.

As this Case is Stated, I conceive that
the Marriage of *Patrimoniale* and *Gallina*
is not Null, and therefore Mr. Cottington
cannot with a safe Conscience Co-ha-
bit with *Gallina* as his Wife.

Jo. Hall.

Mr.

Mr. Cottington for his further information, sent the following Case to the Doctors of Sorbonne, and had the following return from them.

Lucius an English Man Marries Sempronia an English Woman in England, according to the Laws and Customs of the Church of England, and she Co-habits with him about a year and a half, and has a Child by him; and afterwards she makes Application to Titus the Bishop of the Diocess in England, and alledges before him, that her Marriage with Lucius was made by fear and force of her Father; and therefore desires, that he by his definitive Sentence, would dissolve that Marriage; which Titus accordingly doth, and by his Sentence declares it Null and Void, and by

the said Sentence pronounceth it lawfull for *Lucius* and *Sempronia* to marry whom they will ; yet so that a solemn Oath be taken by *Sempronia*, that she contracted Matrimony with *Lucius* out of fear and force from her Father, and that to her Marriage with *Lucius*, she gave not her free consent ; which Oath she took, and no proof of the fear and force in that her Marriage with *Lucius* appears, to have been otherwise made before *Titius*.

Sempronia afterwards, in England Marries *Caius* a French Man, *Lucius* being still alive ; and *Caius* after that going into France, and there living a part from *Sempronia*, she is advised by her Council, to cause *Caius* to be cited before *Mævius*, a Bishop of the Roman Catholick Church in France, and to endeavour to obtain the Sentence of *Mævius* to compell *Caius* to Co-habit with her, saying, That her Marriage with *Caius* is not Null and Void, although *Lucius* was still alive ; because her Marriage with *Lucius* was dissolved

dissolved and declared Null by the Sentence of *Titius*, who though he was a Protestant Bishop of the Church of *England*; and though that Sentence as to its form was Irregular and Null, and as to its substance contrary to the Law of God, and to the Law of the Roman Catholick Church, and contrary to the Canon, and contrary to the Law of *France*, and even contrary to the Laws of the Church of *England*; yet the said Sentence being *de facto*, given by *Titius*, her Council saith; That *Mævius* hath not power to question it, nor to pronounce contrary to it, as being but of equal power with *Titius*, they both being Bishops of several Diocesses; but that he ought to pronounce *Caius* and *Sempronia* lawfull Man and Wife, and command them to *Co-habit*; and he declares that his Opinion in this Case, is according to the practice of *France*.

Now the Query is, if *Mævius* hath not power to question the Sentence of *Titius*,

because he is but of equal Power with Titius, they being both Bishops, though of different Countries and Churches, and if he ought to pronounce Caius and Sempronia lawfull Man and Wife, and command them to Co-habit.

The Doctors in Divinity of the Faculty of Paris under written, having seen the Case above put with all its circumstances, do esteem that the first Marriage is yalid, and that the first Sentence given by Titius is against all sort of Justice; and therefore that the second Marriage is Null.

Given at Paris the 16. of Decemb. 1677.

Puischard.

Thuby.

Here

Here follow the Opinions of Sir Richard Lloyd, and Dr. Richard Raines, Doctors of Law.

THE CASE

Patrimoniale and Gallina intermarry 64, and Co-habit (about twenty Months) and have Issue a Daughter.

But Gallina, it seems not liking that Marriage, pretends it was Null, *propter vim & metum*, and obtains a sentence of Nullity from the Archbishop of Turin; but without any defence, for ought appears, made by her Husband Patrimoniale, or proof of the pretended force or fear.

Gallina being thus separated, doth Anno 71, marry Cottington, against whom Anno 74, she brings an Action in *Causa Matrimoniali* here in England,—where she doth acknowledge and prove the second Marriage.

To

To which *Cottington* doth answer, that her first Husband *Patrimoniale* was then, and is still alive. She replies, 'Tis true, but that first Marriage was declared Null and Void by the Archbishop's Sentence; and he rejoins, That that Sentence in self was Null and Void, being given without proof, and contrary to Law.

The Ecclesiastical Judge here in *England* having this Fact before him, doth give Sentence for this second Marriage, and enjoins the Parties to Co-habit; alledging, that he hath no power, and is not by Law to examine or question the Validity of the Archbishop's Sentence; but ought, notwithstanding any Defects or Nullities therein, to give Sentence for the second Marriage.

Q. Whether the Judge of one Territory may by Law examine and question the validity of a Sentence of a Foreign Judge, and in particular as this Fact is where it is given in a Matrimonial Cause?

A. We

A. We conceive that the Judge of one Territory cannot directly examine and question the Sentence of a Foreign Judge, because he hath no Superiority over him. But if it happens that such Sentence doth upon any incident come before him ; as if he be requested to put the same in Execution, or if one of the parties litigant shall (as the cause may require) make his Plea and found his intencion on such Sentence, then the Judge may enquire into the grounds and merits thereof ; and if he finds it is not agreeable to the Principles of internal Justice, and that it wants the substantials of a Sentence requisite, not by the positive Laws of the place, but by the common and general Law by which (it is supposed) the Case is to be judged, he is to forbear putting the Sentence into Execution, or to admit it as a Plea untill those points be declared, wherein he finds, or hath just cause to judge, it is not agreeable to the Law. There is a
great

22 Mr. Cottington's Case.

great difference in this matter, betwixt Judges of the same, and a Foreign Territory: In the first Case, the Sentence of the Superior is of force, by reason of Subordination and Subjection; and for that Cause, *Res judicata pro veritate habetur*: But in the second Case, the Sentence is not simply took for truth; it hath only a presumption for it. And when that is took off by clearer evidence, it hath no force and operation on a Foreign Judge, who is to observe the Rules of that general and Common Law, and to respect the precept of the same Law; which saies, An unjust and null Sentence is not to be executed, or regarded, rather than the meer Authority and Jurisdiction of any equal Court and Judge.

Now the substance and perpetual rights of Marriage are determined by the Law Divine, and observed in the Catholick Church, which hath added some Supplement or Explications thereunto. All which at least, where they
are

are received and practised, as they are here in *England*, make the common and general Law, to which every Ecclesiastical Judge there is subject, and which he is *ex officio*, and by the precept of the Law, bound to observe; even against the consent of Parties, and the authority of any Co-ordinate equal Judge.

The Premisses considered, since in this Case here is a perpetual impediment objected, by *Cottington*, viz. That the first Husband of *Gallina* was then, and is still alive; and since the Archbishop's Sentence is grounded on a pretended force and fear, not proved (for ought appears;) and if it was, it is by the abovesaid Co-habitation and Issue, purged in construction of Law; we are of Opinion that the Judges of this Territory, ought not to pronounce for the second Marriage, untill they shall be satisfied (if it may be) that the Archbishop's Sentence was good and valid.

Rich. Lloyd.

Rich. Raines.

In the Index of a Manuscript of Collections by Sir Julius Cæsar, Fol. 277. is referr'd to under his own hand, in which Fol. is contain'd as followeth. (The Book is markt on the outside, A. A. 10.)

UPon the Treaty with Gray Lord Chandois, it was thought meet that 16500*l.* should be allotted to the Lady for her right, to the value of 14500*l.* in Land, and 2000*l.* in Money. But in regard the whole Estate moved from the Lady, and that Sir John was able to give her no Advancement or Dower out of his Estate, it was thought meet, that the Lady should have 8000*l.* at her sole dispose, and the residue to be at their joint dispose.

After, upon motion on the Lady's behalf, out of a fear, that the Estate might be

be wasted by Sir John, and thereby she deprived of maintenance (she then having no knowledge of the Marriage in Scotland, or hope of a Divorce, or Nullity of the said Marriage) it was appointed that the same should be conveyed over to certain Feoffees in trust to her use; that she by her Indenture under her Hand and Seal, solely and without Sir John, might dispose thereof.

The which conveyance was directed by three living of this Honourable board, viz. The Lord Treasurer, the Lord Privy Seal, and the Lord Stanhope; and by the Lord Popham, Lord Tanfield, Sir Thomas Hesketh, Serjeant Dodridge, and Mr. Stephens.

The Land allotted the Lady, being sold for 7800*l*, with 6500*l*. thereof Barn-Elmes was purchased; but Sir John being trusted by the Lady to go to Mr. Stephens to draw the conveyance, went to other Council; and in the clause where it should be freely at the Lady's disposal

saI solely without Sir *John*, he caused to be inserted these Words, That the Lady should have power to convey the same, to such intents and purposes as by the said *Elizabeth*, solely and without the said Sir *John Kennedy* by writing under her Hand and Seal enrolled, should be limited and appointed. Wherein, besides the contradictariness of the Sence, he caused in that Deed delivered the Lady (the more to blind her Eyes) enrolled to be razed and made indented. Deed. 31. Decemb. 3. Jac.

And after the Rasure was found out, then by his Deed Dat. 2. Julij, 4. Jac. he the said Sir *John* did limit power to the Lady by her Deed inrolled, or not inrolled to limit uses.

The Lady hath been a Suiter two years (if Sir *John* for saving his own Credit will not confess matter to make a Divorce) then that in course of Justice she may be admitted to her proof, which for that it concerneth matter of State (as is suggested) she is denied. I. And

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1. And therefore she hopeth, it is but the same equity to stay his proceedings, touching her Estate against her or her Feoffees in Course of Justice, considering it is not by her laches that the Marriage is not disproved, untill both the said causes having a dependency one upon another, may be handled at this Board.

2. The course of Conveyance by Feoffees, was by Honourable Personages, Grave Judges, and Learned Lawyers directed when the Lady was supposed the true Wife of Sir John, and they held in Law and Equity sufficient, and now *a fortiore* it should be more sufficient, she being none of his Wife, if she may be admitted to proofs.

3. Sir John hath already advanced himself by the Sale of the Lady's Estate, over and above the purchase of Tonbridge which cost 8500 l. wherein he hath a joint Estate of Inheritance, and all her Debts that he hath paid, 7700 l.

H

4. If

4. If the course propounded at this Honourable Board shall not hold, then will the Lady never assent to Sell, and so shall the Debts of the Lady before Marriage, now resting unpaid, being 2207*l.* and Sir *John's* own Debts rest unsatisfied, to the oppression and clamour of many poor Men, and the King still troubled with renewing his Protections.

5. If Sir *John* should proceed in course of Justice, and that the conveyance made to Feoffees, should not be held sufficient and strong enough to convey the same to the Lady; yet Sir *John* can have but the profits thereof, being but 300*l. per annum*, and not that clear which is not able to pay half the use of the Money.

6. Besides, before any Sute began, the said Mannor of *Barn-Elms* was for valuable consideration of Money lent, Mortgaged and now resteth forfeited for Non-payment of 2000*l.*

In the Index of Sir Julius Cæsar's Manuscript of Collections, Fol. 280. is under his own Hand referr'd to, in which Folio is contain'd as followeth.

The Book is markt on the outside A. A. 10.

'Tis in the Index writ with his own Hand, in relation to Fol. 280. Whether an English Jurisdiction may disannull a Marriage solemniz'd in Scotland?

A. B. a Scotchman, in a Parish Church in Scotland, publickly in the presence of the Congregation, solemnizeth Marriage with a Scotchwoman.

About six or seven years after the said Marriage, the Scottish Woman pretending that at the time of her Marriage, she was but Ten years Old, or at the least under Twelve, before certain competent Judges in Scotland, procureth a sentence of Divorce to be given against the said A. B. whereby the Marriage between A. B. and her was pronounced to

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be void, and of no force; and that she was at liberty to Marry again to any other upon this ground, That she was under Twelve years of Age at the time of her Marriage, and that she never consented thereto after she was Twelve years Old, nor had Carnal knowledge of the said *A. B.* from which Sentence no appeal or provocation was made.

Afterwards, the said *A. B.* coming into *England*, did solemnize Marriage with an *English* Woman, the *Scottish* Wife being then living; after which marriage the said *A. B.* and the *English* Woman for certain years Co-habited together here in *England*, as Man and Wife; the said *English* Woman being ignorant of the premisses done in *Scotland*. During the time of which her Co-habitation with the said *A. B.* the *Scottish* Woman dieth: After whose death the *English* Woman being certified, that *A. B.* had another Wife living when he married her, so as he could not be her lawful

ful Husband at the time of her Marriage, the said *A. B.* and she dwelling both in *England*, she refraineth from the company of *A. B.* and complaineth to the Ecclesiastical Judges in *England*, having Jurisdiction in the place where the said *A. B.* and she dwelleth; and craving Justice, offereth to prove that the said *A. B.* and the said *Scottish* Woman were lawfull Man and Wife; and after the said Marriage, had Carnal knowledge of each other, and that they Co habited together as Man and Wife, five or six years after she was Twelve years of Age, admitting she had been under that Age at the time of the Marriage; and desireth to be admitted judicially according to the ordinary course of Law, to alledge and prove her aforesaid Assertions before the said Judge, and upon proof thereof to have Sentence for the Nullity of her own Marriage according to Justice.

It is objected on the behalf of *A. B.* That she ought not to be admitted there-to, for these causes, *viz.* Because the Marriage with the *Scottish* Woman was solemnized in *Scotland*; the sentence of Divorce was given in *Scotland* by the Judges there, where the Judges of *England* have no Jurisdiction, nor Superiority over them. That there was no appeal or provocation from that Sentence. That it was given by the Judges of an high Court in *Scotland*, from whence no Appeal lieth: And that if the *English* Woman's marriage should be pronounced void here in *England*, the justice of the Realm of *Scotland* may thereby seem to be taxed.

The Question is, Whether the Ecclesiastical Judges or Judge, having Jurisdiction in the place in *England*, where the said *A. B.* and the *English* Woman dwell, be competent Judges, and may and ought at the Petition of the *English* Woman, to hear and determine this cause

cause of Nullity, of the marriage between her self and *A. B.* notwithstanding the former Objections?

We are of Opinion, without any doubt, That the Ecclesiastical Judge having Jurisdiction in the place in *England*, where the said *A. B.* and the said *English* Woman dwell, may and in Justice, is bound at the complaint of the said *English* Woman, to hear and determine the said cause, concerning the validity of her said Marriage, and to pronounce the marriage between her and *A. B.* to be void, if she prove before him the matters by her alledged; notwithstanding the aforesaid Objections.

Neither can the Justice of *Scotland* be thought to be impeach'd thereby, though upon sufficient proof made before the Judge here in *England*, which was not made before the Judges in *Scotland*; he giveth a Sentence which may seem repugnant to the Sentence given in *Scotland*.

In a Manuscript Book of several Collections made by Sir *Julius Cesar*, Master of the *Rolls*, and Chancellour of the Exchequer, and one of the King's most Honourable Privy-Council; there is referr'd to in the Index of the Contents, writ with his own hand, viz. That the question between Sir *John Kennedy* Knight, and his Lady, touching the lawfullness or unlawfullness of their Marriage, may be tryed, heard or determin'd in *England*, where both parties are inhabiting. And from *Fol. 2d.* of that Book, to *Fol. 8th.* the following Leaves are Transcribed; the Page before *Fol. 8th.* in Sir *Julius Cesar's* Book, is thus with his own Hand indors'd, viz. The Reasons of the Resolution of *A. B. 25. Jan. 1610.* The said Manuscript Dr. *Trumball* borrowed of Sir *Charles Cesar*, and it yet remains in the Doctors Hands. 'Tis markt in the back C. S. 8.

Certain Points in Law and Reason, whereby it may plainly appear, that the question between the Lady Kennedy, and Sir John Kennedy, concerning the Validity of their Marriage, may and ought by ordinary course of Law, be heard and determin'd before the Ecclesiastical Judges in England, who have jurisdiction in the places where they both dwell. Whereupon the Civilians have grounded their Opinions, given in this Case to that effect.

F*irst, by Law and Reason, there can fall out no Question or Controversie between any Persons inhabiting in any Civil Common-wealth or State, but the same must be decided by some competent Judge, or Judges, who ought to have Authority to hear and determine the same; or else there must needs ensue Confusion and Horrour.*

Secondly, When any Controversies happen between any Persons proceeding of any

any contract whatsoever, that require a Determination or ending by Judgment wheresoever the Contract was made; those Judges are by Law the competent Judges to hear and determine that Controversie, who have jurisdiction and power in the place, where both the parties or the party defendant dwelleth, to hear and determine causes of that Nature.

Thirdly, If there fall out any Controversie between any two Persons, the Defendant cannot be compelled to appear to answer the Plaintiff; but before the Judge of the place, where the Defendant dwelleth, and especially if the Plaintiff himself dwelleth under the same Jurisdiction.

Fourthly, In all Causes where there may ensue peril of Soul and continuance in Sin, the Judge of the place ought of his Office to enquire thereof, and redress the same though no Man complain thereof.

Where.

Whereupon it followeth, That the Ecclesiastical Judges here in *England*, who have Authority to hear caules of Matrimony, are the competent Judges, and have power to hear and determine this matter of the lawfullness or unlawfulness of the Lady's Marriage; and the rather, for that the Lady's Marriage (which is the principal matter in question) was made and solemniz'd here in *England*.

If it be objected, That because that Point whereupon the Validity or Invalidity of the Lady *Kennedy's* Marriage dependeth, viz. the Marriage between Sir *John* and *Isabel Kennedy*, is already adjudged by a definitive Sentence long since; from which there hath been no appeal or provocation, and therefore it must Barr the Lady. We answer, That although in Causes of other Nature, where no danger of sin might ensue, though the Sentence were against the truth; if a Sentence be once lawfully given,

given, and not appealed from in due time, the matter cannot be called in question again; yet, where a Sentence is given to dissolve or annul a lawfull Matrimony, that Sentence may at any time, though never so long after, be called in question and reversed, whensoever it may be made to appear that the truth is contrary to that Sentence; and that may be done even by the party himself who obtain'd that Sentence. And therefore not only Sir John Kennedy, but Isabel her self might have reversed that Sentence, proving the same was given by error; much less shall the Lady who was not party to that Sute, be thereby debarred from proving the Nullity of her Marriage, being a distinct cause from that. And the reason of the difference between a Sentence against a Matrimony, and a Sentence in another Cause; is, because in other Causes, where no fear is of Sin, or peril of Soul to ensue, the parties may by their agreement make what end of the Business

Business they list, by composition or otherwise. And therefore if they do not appeal from the Sentence given against them, they are thought by their consent to confirm the same; but because a Marriage by God's Law cannot be dissolved by the Agreement or Consent of the Parties, no Sentence therein given against a Marriage, contrary to the truth by error, can by the Parties agreement be confirmed, lest if it should be otherwise, thereby they might by colour of the erroneous Sentence marry other Persons and live in Adultery. Nay more, If the Parties themselves thus erroneously divorced contrary to the truth, would hold themselves contented with the Sentence; if either of them marry any other Person, or they both live incontinently with other Persons, the Judge of that place, where they inhabit, may and ought of his own Office to enforce the Parties, so by error divorced, to live together again, as Man and Wife, and separate them from their second Spouses.

If

If it be objected, That the Sentence was given in another Country, where the Judges of *England* have no Jurisdiction, and in an High-Court from whence there lieth no Appeal; and that the Judges of *England* have no Superiority to call their Sentences in question, and that therefore the Lady cannot call that Divorce in question here: We answer, That the principal cause in this case of the Lady's, is not to reverse or call in question the Sentence given in *Scotland*: but the principal Cause here is, Whether her Marriage made in *England* with Sir *John*, be of Validity or no? For that (as we say) Sir *John* had another Wife living, viz. (*Isabel Kennedy*) at the time of her Marriage, without any mention to be made by the Lady of any Sentence of Divorce given in *Scotland*; against which our Allegations, if Sir *John* object, That he was Divorced from her by Sentence in *Scotland*; this question of the Divorce is brought in, but incidently

cidentally by Sir *John* in this Cause, and also vainly and impertinently, if it can be proved, that the truth is contrary to that Sentence; for that Sentence is in Law meerly void, and cannot Barr the Lady for the reasons before alledged, and for that *Ecclesia* was *decepta* in giving of that Sentence. Now when a Sentence which is void in Law (and especially against a Marriage) is called in question, but incidently before any Judge whatsoever, though an inferior in a Cause which doth principally belong unto his Jurisdiction, that Judge may take knowledge of, and incidently examine the validity of that Sentence, whether it were good or no, by whom and wheresoever that Sentence was given, though he were never so Superior a Judge; not to the end to reverse or expressly to pronounce that Sentence to be void or not void, but as he findeth it by examination of the Cause to be good or void; so to give Sentence accordingly, and determine the Cause principally

principally depending before him, without ever mentioning ~~the~~ erroneous Sentence in his Sentence.

Neither can the Sentence given here for the Nullity of the Lady's Marriage, upon other matter than was pleaded and proved before the Judges in Scotland; although the same Sentence had been principally called in question, and directly pronounced to be void, any ways impeach the Justice of Scotland; for sixth Judges, in all Courts and Causes must judge according to that which is alledged and proved before them; what impeachment is it to the justice of any Judge (although his Sentence be revoked, and a contrary Sentence given by another Judge) when the parties between whom the Sute is, either cannot, or through negligence or collusion, will not alledge or make such proof before him, the first Judge as they might, but afterwards before the second Judge, good and sufficient proof is made; a

matter

matter which falleth out every day here in *England*, in every Civil and Ecclesiastical Court, upon appeal made from one Court to another, and the like falleth out in all other Countreys; and yet the former Judge, whose Sentence is revers'd, thinketh not himself any whit impeached of injustice thereby.

That the absurdities which would ensue, may by example more plainly appear, if the Law should not be as we say. Put this Case: A Widower in the confines of *England* towards *Scotland*, marrieth a Wife in a Parish-Church publickly, in the presence of a hundred Witnesses, and afterwards they live together by the space of a Year, and have a Child; at the years end, upon some discontentment) they both being desirous to be rid the one of the other,) the Woman in *England* sueth her Husband to be Divorced from him; pretending that at such time as he married her, he had another Wife living, and produceth

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Witnesses which prove that he had married another Wife before he married her, and Paraventure make some probable shew, that that Wife was living, when he married his second Wife, who in truth was dead before, as the Man could have plainly proved by twenty Witnesses, if he had listd; notwithstanding, the Husband being willing to be rid of his Wife, either would not plead that his former Wife was dead, or else would not make any proof thereof. Whereupon the Woman obtaineth Sentence against the Man, whereby the marriage between them two, by this collusion and error, is pronounced void; from which Sentence there was no Appeal or Provocation. Now within a Month after this Divorce, this Man goeth into the Confines of *Scotland*, not ten Miles from the place where he and his divorced Wife formerly dwelt, and there marrieth another Woman, being ignorant of the former Wife and collusion

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fory Divorce, and there Co-habitheth and dwelleth with her. This Woman shortly after, understanding of the premisses, and that she could not be his lawful Wife, but liv'd in Adultery with him, desireth before the Judge in Scotland, under whose jurisdiction they both dwell, to be divorced from him, and to be delivered from her adulterous living with him; and offereth to prove all the Premisses most manifestly. Were it not now a most absurd and abominable thing, that this Woman should have no remedy any where, but be enforced to live still in Adultery with this Man; because the Sentence of divorce was given by a Judge in England, pronouncing the Marriage between the Man and his second Wife to be void; whereas it can be most manifestly and apparently proved, that his first Wife was dead before his second Marriage; and so the Sentence was given against the apparent truth? And what impeach-

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ment of injustice can this be to the judge in *England*, before whom it was never proved, That the Man's first Wife was dead, to have his Sentence reversed upon new proofs made before the Judge in *Scotland*?

Now between the Lady's Case and this Case, there is no difference in truth of matter and point of Law, only by reason of the multitude of the Witnesses, the nearness of the time, and place when, and where these things in this case were done. The truth thereof may more easily and readily be proved, than in the Lady's cause it can; but if the truth in her Case be proved, though with more difficulty, the Cases are all one.

If any Man shall yet doubt, whether this cause can be heard and determin'd by the Ecclesiastical Courts in *England*, it is desired, That Sir John's Counsel, considering the Marriage was made here in *England*, and the Lady and Sir

John

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John do both dwell here, and by Law Sir *John* is not compellable to appear in any other place than *England* for this matter, they would tell, before what Judge this matter should be heard, and determined? For it is to be presumed, that when two persons live in Adultery together, and so in continual sin, and the one of them seeketh redress, and to be freed from that sinfull and adulterous life, no Man will say, That he or she shall be compelled to live notoriously in Adultery still, and have no Judge at all to separate them and remedy this enormity.

If further doubts be made how, where, or in what manner proof shall be made in this Cause; it is said, that this Question doth not concern the Question, What Court or before what Judges, the cause shall be heard and determined; but to this, it is answered, That the proofs shall be made in such manner, as they be ordinarily in all other Cases; that is,

by the Answers of the contrary Part upon Oath, by such Witnesses as they can procure voluntarily to come before the Judges here, from whence, or out of what Countrey soever they can procure them. If they will not come voluntarily, then if they be within the jurisdiction of the Judge, and the party producent think so good, he shall have Processes to compell them to come before the Judge; if they dwell so far off as that it will be too chargable to bring them before the Judge, then a Commission shall be granted to some Commissioners to examine them near the places where they dwell, and this if they dwell within the Judge's Jurisdiction; but if the Witnesses dwell out of the Judge's Jurisdiction, in any other Place, Realm or Countrey, Then the Judge of the Cause may direct a Commission requisitory to the Judges of the Places or Countreys where the Witnesses dwell, to intreat them to examine
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the Wirnesses remaining there by their Authority, and to send their Depositions to the Judges of the Cause, also by the Records of other Courts; or any other Instruments or Writings which may any ways further the Cause; these being the ordinary and usual courses used for making of Proof in every Cause, every Day, and will not be denied by any acquainted with the Proceedings in any Ecclesiastical or Civil Courts.

Q. 1. Whether in the *Tucin* Process for the dissolution of the Marriage betwixt *Frichinono* and *Gallina*, there appears so manifest a Collusion, that if the said Process comes to be examin'd before our Court, the Sentence for the dissolution grounded on that Process will be declared Void?

A. I am of Opinion in the Affirmative.

A Collusion, as all other Clandestine Acts and Agreements, is accounted by the Law to be *Difficilis Probationis*, and

therefore a direct Proof is not required, but Conjectures and Presumption alone, arising not only from what has been done, but from what was omitted, will pass for full and concludent Evidence; *ut per Felin. c. Præterea n. 2. de Testibus & D. D. com' omnes in c. Literis, &c. tertio loco de præsumpt.*

Now there does not appear throughout all the Acts, that the *pars rea* used any diligence to defend the Cause. 'Tis true there was the formality of a Proctor, but he seems rather to be appointed to substantiate Proceedings on the other side, than to defend the Marriage on this; for that it appears by the Sentence, there was nothing done on the part of *Frichinono*: the words are *Visis Actis ex parte Galline tum distributis*; Then 'tis *Gallina* that is at all the expence, though she obtains in her Suit, and likewise gives an ample Reward of 100 Crowns in Gold to the Court for Testimonials.

Erichinono, though in his Answer upon Oath, he believes it to be a good Marriage, and never knew of any such Averſion as is alledged; yet he adds, That if it ſhall be ſo determined, he doth not diſſent, but that the Marriage may be declared Void; and as he doth nothing in this inſtance, ſo neither does he Appeal. Now by theſe Omiſſions the Colluſion appears, which Colluſion renders the Judgment Void, but eſpecially againſt a third Party, and that it has been thus often determined in like manner.

Monoch. Conſil. 501. n. 8. & 688. n. 35. Sententia inter alios lata, eſi certis in caſibus nocet, id tamen intelligitur quando ille victus omnem adhibuit diligentiam ne vinceretur.

Surdus de Alimentis. F. 9. Q. 42. n. 32.

Atque ita conſtare debet eum bona fide litem pertractaſſe. *L. Si duo patroni. F. De jurjurand. & ita communit. Atqui noſtro in caſu non adhibuit, ut ne vinceretur, quia non*

non modo non contradixit, sed quodammodo
 consensit, in that he declares he will
 not dissent. Præterea (saith he) culpa
 & negligentia ejus detegitur, quia à sen-
 tentiâ latâ non appellavit, ut fieri solet, &
 jure permissum est. Et accidit quod hæc om-
 missio Appellationis est tacita quædam juri-
 um renunciatio, quæ alteri quam renuncianti
 nocere minimè potest, sicuti in specie Bal-
 dus & Salicet in L. 2. C. quibus res jud.
 non nocet: & ibi, Imo non appellans, cum facere
 id debuit, colludere eam adversario præsumi-
 tur. L. Si servus plurium. S. Sed si ante.
 F. De Leg. & Decius Consil. 306. n. 4.
 aliq; ibid.

This was in a Civil Cause, but the
 present Case is much stronger, being a
 spiritual Cause, ubi vertitur periculum ani-
 mæ; and odious too, in that it is for the
 dissolution of a Marriage, which in con-
 sequence may occasion the Sin of A-
 dultery; in which there might have
 been pleaded many things as excepti-
 ons to the Persons of the Witnesses,
 and

and their sayings; But chiefly the Co-habitation with all its Circumstances; and at last, the Fear that is pretended is but Reverential. Why, what can be concluded from hence, but that by such Artifice the Church is deceived, and the Law in that Case

1. Lator de sen. & re jud. de errore, retractabitur sententia. c. Fraternitas de frigidis & maleficialis.

Q. 2. Whether the pretended proof of the Force and Fear, she suffered from her Father in that Process, be not insufficient in Law?

A. I am of Opinion that the Proof is insufficient.

1. For that they are but single Witnesses, & *nunquam probant etiam si mille jungentur*; especially in *Arduis*, such as are Criminal, and Causes *de matrimonio dirimendo*. But more especially where the presumption of Law is against it; as in our Case, if we Consider the Co-habitation with all its Circumstances.

2. The

2. The matter deposed does not amount to such a Force as the Law takes notice of. And 'tis chiefly *ex auditu*, either from her own Relation, or the Father's or Brother's; as they heard her say, She had no Affection; That she would not consent, That her Father would Force Her. *Giacono Batta* and *Compeggio* depose no more; *Rath. Quaglini* and *Monfort*, say, He told them so, and she too, but separate: *Galliero* heard *Dominico* chiding and threatening, but 'twas but the Father told him, 'twas in the Business with *Frichinono*. None but *Cornelius* swears to Knowledge, and he to an uncertain time. At Supper once she told her Father, She would not consent, for that she had no Affection for him; *Dominico* then rose and gave her two Blows; and when she was gone, he said, He would strangle her if she would not have him. This is the substance of all the Evidence, which certainly can make no concludent Proof, either

either of the Dislike, or Force or Fear; perhaps there might words of this Nature fall from her, as 'tis usual among young Women when they are Courted, either to their Familiars or their other Lovers; for by speaking against those that are absent, they more oblige him that is present.

But then there is this to be attended, and 'tis *Argumentum à verisimili* Negative, Is it probable that in Case there had been such an Aversion as she pleads, and such a clutter to force her Consent, that Frichinono should never know it before or after, either from her self or some other? For so he does directly swear; and yet 'tis apparent enough by what has been said, that he did countenance the Divorce, and so seems to swear against himself.

3. If there is any stress laid upon that additional proof made by her suppletory Oath, that's as weak as the rest, for that is not admissible by Law.

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especially in *dirimendo matrimonio*, *c. Mulieris. De Testibus*, & *gloss. ibm. D. D. Coiter omnes in l. 3. & c. Admonendi. F. de Jurejurando*, especially if we consider all the Circumstances in this Case.

4. In case the Force and Fear that is pretended were in full Proof; yet 'tis but Reverential, and the Force howsoever it may be in other Cases which are frequent in our Books; yet I find by the best Authorities, that the Law is otherwise in case of Parents, especially where the Children are not Minors, that a reverential Fear cannot dissolve a Marriage; for that 'tis not believed that Parents would do any thing prejudicial to their Children, *Cum præsumatur Patrem recte consuluisse filia*: and the Civil Law allows but one cause of Dissent: *L. Sed ea quæ, F. De spons. Tunc autem solum dissentiendi à Patre licentia filiae conceditur; si indignum moribus vel turpem sponsum ei pater eligat.* There are some of Opinion that a Reverential Fear with o-
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ther Circumstances may, as if there be *Mina & Verbera* in the Case, and that the Parents are wont to put their threats in Execution; and this Opinion is founded *Sapra c. in literis De spons. impuberum*. I think a very weak Ground. The

Case: There was a Girl of 12 years old, was espoused to a Boy of 9 or 10.

Quæ de voluntate parentum potius quam sua ad domum patris pueri adducta, ubi nolens & invita, minis parentum, impulsam moram fecit per annum, & tandem regressa est.

The Judgment was, *Cum puer nondum ad 14 Annum pervenit, nec ad eandem carnaliter accessum habuit*, she should have the Liberty to marry with another. Now we are within but one Circumstance of that Case. The Woman here was nearer 30 than 12: It does not appear in Proof, nor is offered, that she was Forc'd by threats to continue at *Frichinono's* House; it is clear, that *Frichinono* was nearer 40 than 14, and that 'tis very probable he had the carnal knowledge
of

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of her, for she had a Child, which with the voluntary Co-habitation for near 2 Years, with liberty of going whither she pleased, together with what is in proof by her own Witnesses, of her Visits to Persons of Quality, and *Frichino*'s Absence in *France* for about half a Year, and no protestation before or after. *Bellus Confil.* 65. is clear in this very Case.

Q. 3. Supposing the said Marriage were really made through Force and Fear, yet being ratified by a Co-habitation of almost 2 Years, and issue, whether the Council of *Trent* does Authorize its dissolution?

A. I am of Opinion in the Negative, for that the Council has prescribed a Probatory Form for Marriage, enacting, That all Marriages shall be void that are not celebrated in the Presence of the *Parochus* and 2 Witnesses. Now some are of Opinion that the old Law is corrected by this, not only in the Addition
of

of the *Parochus*, but in a far greater matter, collecting from hence, that a contract, so celebrated, but being void by reason of Force, though it were ratified by a subsequent Co-habitation with issue, which might purge the Force by a tacit consent; yet because it was not *de novo*, in the form of the Council celebrated before the *Parochus*, and two

Witnesses as it was at first, it cannot pass into a substantial Marriage. But I do conceive this inference cannot be justified out of the Council.

Tom. 1. part.
2. c. 3. §. 6.
Conf. 170.
l. 4.

1. Because I do not find it asserted by any modern Authorities, such as have wrote since the Council of Trent, who otherwise are tenacious enough of the Decrees of that Council; such as Covarruvias, Parisius, Christinæus and Bellus, (who was Prothonotary of the Apostolick Sea, and Dean of the Roe of Avignon, Anno 1620.) but that they all agree, that a subsequent Co-habi-

tation where the cause of Fear does not remain, induces a Tacit Consent and establishes a Marriage, which might otherwise have been void. Now if the form of the Council had been necessary a second time, these could never have been silent in it.

2. Because the Council does not expressly command it in this Case, and then the vulgar Rule is, *Quod à jure veteri recedere non debemus, nisi quatenus jus vetus expressim est correctum*. Neither is there a parity of Reason with the *desponsatione Impuberum*, which was adjudged *decis. noviss. part. 4. f. 69.* for those are but *sponsalia de futuro*, though the words are *de presenti*.

3. Reason suggests otherwise. 'Tis certain that Consent is an act of the Will, and does consist in the Mind, and can appear to us to be voluntary, by no other means than as Force and Fear is proved, and that by conjectures; now these conjectures must be collected

ed either from Words or Acts, such as may signifie and give a moral certainty of the internal willingness of the Party, perhaps more than Words; for so it was adjudged of him that said he would not do the Will of his Father, but yet did it; if therefore the subsequent Acts be of the like Nature, and pursuant to the principal, we always judge that they have respect to it as the Original, and serve to Expound and Confirm it, *nam ratihabitio retrotrahitur & mandato equiparatur*. Now 'tis evident in this very Case, here was a consent of *Gallina* solemnly exprest in the Form of the Council; whether 'twas voluntary and really her Mind or no, God and her own Conscience only can tell; but there does not appear any thing in Proof, to the contrary at the time of the Marriage.

And therefore admit, that before and after the Solemnity, she might say that her consent was not free, yet she did not

say so at the time, And in Truth and Reality, notwithstanding these common Preences, it might then be free; and Law and Reason presume it was so, from those subsequent Acts that were in pursuance of it, such as was the Co-habitation in this Case with all its Circumstances; for those subsequent Acts do not create a new Marriage instead of that which was Null and Void for want of free consent; but ratifie only and confirm the first, or rather give us an assurance and demonstration that that was a free internal consent, which was exprest in the Form of the Council; notwithstanding those Specious Preences to the contrary, whereby she would impose upon us, and according to which we (that can see no further than outwardly) ought to have judged, in Case there had not been these subsequent Acts; and therefore undoubtedly there needs not a second Celebration in the Form of the Council, when by these Acts

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we are assured that she gave her free consent in the First. *Ex coitu matrimonium præsumi, si prius consensus verbis expressis, sed propter causam aliquam vel impedimentum humani juris nullum præcesserat: satis senim tacite aliquo sufficiente signo novum consensum præstari,* says Parisius, who was a Cardinal since the Council of Trent.

Q. 4. In Case the Council does authorise its Dissolution, whether it does therein act contrary to the Law of God?

A. I'll leave this question to the Divines, but if that be Law, I have said before, then I think God has joyn'd them.

Q. 5. Supposing the Council of Trent does authorise its dissolution, and that it does not act contrary to the Law of God therein; whether according to the due and usual proceeding of our Courts and the Laws of our Nation, where the Coun-

Council of Trent was never received, we shall, or ought to allow of such a proceeding upon the account of a community of Rights, or any other account whatsoever?

A. I am of Opinion in the Negative.

For however it may be in Civil Causes in point of Commerce or the like; the Reason is not the same in Criminal or Matrimonial, *ubi vertitur periculum animæ*, which may arise from the difference in Laws and Religions; for 'twould be strange Doctrine to assert, That a Subject of *England* ought to be executed here upon a Sentence of Heresie in *Rome*; and as strange to adjudge the dissolution of a Marriage here, because it was not celebrated according to the form of the Council of Trent: or rather as this Case is, To force a Subject of *England* to Cohabit with a Woman, who in the construction of the Laws in *England*, is another

nother Man's Wife ; for that is done by putting in Execution here a Sentence of Divorce, which was given at Turin upon the Council of Trent, (which Council was never promulgated in England,) and when the Law is in Terms otherwise, *Hipol. de Morfil. singular. 138. n. 2.* *Judex*, says he, *unius territorij mandat Executioni sententiam judicis alterius territorij, &c. Tene tamen mente quòd istud procedit quando Judex pronuncia-vit secundum leges, non autem statuta ipsius loci ; tum alter judex non tenetur.* And therefore says, *Jason, In executivis debent attendi statuta illius loci in quo fit executio, & non alterius, secundum Bart. & omnes.* And further says *Angelus l. Si ut proponi, c. De execut. rei Jud. Talis Judex alterius territorij potest de iniquitate talis sententiæ cognoscere, & si viderit esse iniquam, aut de hoc vehementer suspicaretur, non debet illam executioni mandare.* And this is the common Opinion.

William Oldys.

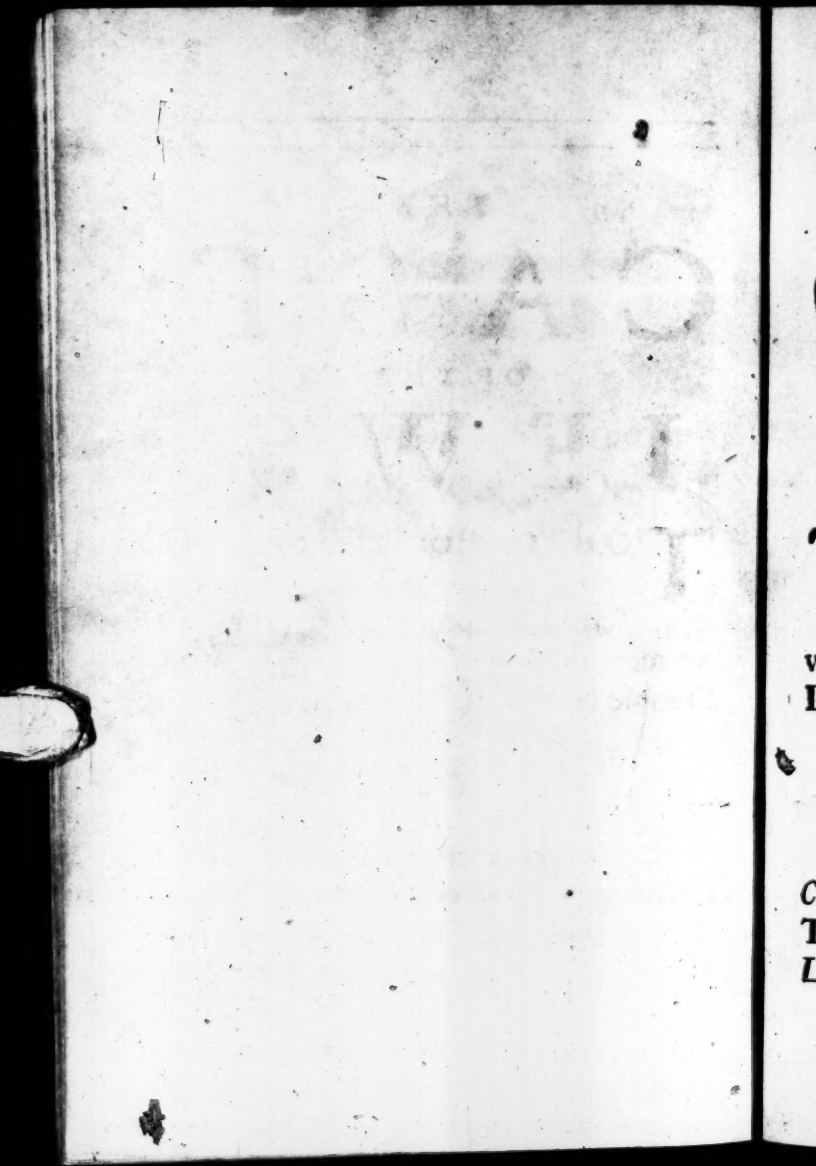
I have read and considered the Answers given by Dr. Oldys to the foregoing Questions; and do agree with him in Opinion.

Richard Lloyd.

ΠΑΝΑΛΕΚΤΑ

DE

ΨΥΔΑΕΙΣ in Reipublica
Christiana tolerandis, vel
de novo admittendis.



THE
C A S E
 OF THE
J E W S.

TO this Question in short I say,

1. That in Scripture (a) *(a) Rom. 2. 28, 29.*
 we meet with a *Jew* in a
 Double Notion.

1. *Εσωθεν, & in Corde.

2. *Εξωθεν, & in Carne.

2. For the First, they are called,
Circumcisio Spiritualis & in Spiritu;
 The Second, *Circumcisio Carnalis & in*
Litera. De Judæis Corde non quæritur,

4. *The Case of the Jews.*

For so every true Christian is (in Scripture) called a *Jew*. Rev. 3. 9. & Rev. 2. 9.

3. For the Second Sort of *Jews* in *Carne*, they are,

1. *Natione tantum Judæi.*
2. *Religione tantum.*
3. *Natione & Religione simul.*

Now the Question is only of a *Jew* in Religion (of what Nation soever) or of him who is a *Jew*, *Natione & Religione simul*. Whether such may be admitted in a Christian Commonwealth?

In Answer to this Question, I say, That the Toleration or Admission of such *Jews* may be considered in a Twofold Relation.

1. *Respectu Reipub.*
2. *Respectu Ecclesiæ.*

1. In

1. In Respect of the Commonwealth, there are only Two Things properly considerable to a Statesman, which may make their Toleration or Admission Legal or Illegal, Convenient or Inconvenient, according to the Nature and Condition of those Politick Considerations.

Now these Considerations are,

1. Whether there be any Law of the State against such Jews being here : for if there be, then *stante Lege*, they cannot legally be admitted. And in *England* there is such a (a) Law ; but that Law taken away (and as the Supreme Power made it for good Reasons (as they conceited) then, so the Supreme Power may (possibly for better Reasons) alter it now ; the State may readmit them *Lege non obstante*. So that if the Supream Power abro-

(a) Statut. de Firdaismo. Termino Hilarum. An. 118. Edwardi 1. And they were expell'd An. 1291. Th. Stubbs. de Pontif. Eborac. censib. in Joh. Romano.

gate that Law, then 'tis manifest there is no Legal Impediment (as to the Civil Law of this Nation) but that they may (if it seem good to the Wisdom of the State) be readmitted.

The Second Consideration (as to the Political Part of this Question) is the Damage or Benefit, the Conveniences or Inconveniences which may accrue to the State by their Admission or Rejection.

Now as to this I shall add,

1. That seeing the Law of Nature and Nations tell us, that

Cicero de legib. Lib. i. Salus Populi suprema

Lex est, if it appear to his Highness and his Council (who only are Judges of this and not the People) that the Common-weal will be advantaged by their Admission, then (no doubt) they may and ought to be admitted.

2. If otherwise, they are not.

Now

Now whether it be for the Benefit and Secular Advantage of the Commonwealth to admit the *Jews*, I shall not Dispute, but leave it to the Prudence of the State, only I shall observe here Two Things.

1. That whilst the *Jews* lived in England it was a vast Benefit to the Crown. I shall give one Instance taken by my Lord (a) Cooke out of the (b) Records. That from December 17. Anno 50. Hen. 3. till Shrovetide. 2. Edwardi 1. which

(a) My Lord Cooke
Institut. part. 2. pag.
506. De Statuto Ju-
daismi.

(b) Rot. Patent.
An. 3. Edwardi 1. in.
14. 17. 26. Middleton
Reddit Computum.

was about Seven Years, the Crown had 420000 *l.* 15 *s.* 6 *d.* De Exitibus *Ju-
daorum*. The Ounce of Silver was then
but xx *d.* and now 'tis more than
thrice so much, so that (as Money goes
now) The Crown had of the *Jews*
in Seven Years, above 1260000 *l.*
such a Sum now might save Contri-
butions.

2. It appears by our Story that the *Jews* (at their Expulsion, and many times before) were not

(a) *Videsis Matth. Paris ad Ann. 1239. in Hen. 3. pag. 489. Et ad Annum 1254. pag. 887. Walsingham Hypodig. Neustria, ad Ann. 1289. pag. 476.*

only (a) Unchristianly, but Inhumanely and Barbarously used; and then seeing Common-wealths and Societies never die (though par-

ticular Persons do) it may be a Query whether the Common-wealth of *England* now are not bound in Conscience and Equity to make some Satisfaction by real Kindness and Civility

(b) And as in *England*, so elsewhere the *Jews* (though bad enough) were falsely accused, and upon that Banished. *Uxorum bona fisco vindicarentur.* So they were expell'd out of *Spain* by *Ferdinand*, and *Emanuel* King of *Portugal*, out of *France* by *Dagobert* and *Philip the Long.* *Bodinus de Repub. lib. 3. pag. 549. Edit. Francos. 1594.*

to the present *Jews* for the (b) Injuries the same Common-wealth did to their Progenitors then ?

Dub.

Dub. The main Objection against them, why they were banished, was their Usury, and the Mischief that came thereupon, as appears by the Preamble of the (a) Statute by which they were banished.

(a) Statutum de Judaismo Term. Hillaris
18. Ed. 1.

To this I say, these things,

Sol. 1. That Usury is tollerated in all Christian Common-weals (even in ours) and therefore to expel *Jews* for that which is tollerated in Christians, is irrational.

2. The State may limit their *modus usuræ*, not to exceed that allow'd by Statutes, and then no more Fault in them, then us.

3. If you consider the Tolleration and Readmission of the *Jews*, *respectu Ecclesiæ*, there are only Three things which may rationally hinder a Toleration and Readmission of them, into a Christian Common-wealth, as Christian.

1. *Inho-*

1. *Inhonestum.*
2. *Incommodum.*
3. *Scandalum.*

1. *Inhonestum.* I conceive, that for *Jews* to live among Christians, or Christians amongst *Jews* is not *Inhonestum*, or *Malum per se*, as being against no Law of God, natural or positive, either that of Nature or Scripture. Because,

1. Our Saviour and his Apostles after him, lived amongst *Jews* unconverted, which they would not have done had it been unlawful.

2. The Apostles and primitive Christians lived amongst *Pagan* Idolaters, who were far worse than *Jews*, yet made no Scruple of Conscience, nay the Apostles approving it : For the Apostle commands the Christians to live so, that they might gain the *Pagans* to the Faith by their Pious
and

and Christian (a) Conversation : and therefore they supposed they might live amongst them ; for it were not Sense to suppose, that they could gain those by their Conversation, with whom they might not converse.

(a) 1 Pet. 3. 1. &
1 Pet. 2. 12.

3. It is certain and an undoubted Principle, That *Domium non fundatur in gratiâ*, and therefore a Jew, nay a Turk, or Pagan hath a just Right and Propriety in their Estates, as well as Christians. And having so when some of the Jews were turned Christians, they were neither bound to quit their Inheritance or Country, to avoid the company and conversation of those Jews, who were not, nor when they were multiplied so, that the major and ruling Part were Christians, could they (by any Law of God or Man) without manifest Injustice, disquiet the Unconverted Jews in their Possessions,

sessions, or banish them from their Inheritance.

4. In the *Jewish Church* (by Gods *express approbation* *and command*) their *Gezim Advenæ*, *περοήλυτοι* (whom the 70 Interpreters, and *Hellenists* call *γελωπες* and *γεωεξι*, from the *Caldee Georim*) - even those which they call'd *Profelyti Portæ*, who were neither circumcised, nor submitted to the Law of *Moses*, were permitted to live; and God expressly commands, that the *Jews* should use them kindly; provided that they abstained from Idolatry and worship't the God of *Israel*: Now if these might live in the *Jews Church* though not circumcised, nor submitting to *Moses's Law*, why may not *Jews* live in the *Christian Church*, though they be not baptized and submit not to the Gospel?

5. The

5. The Practice of the Christian World in all Ages, and the (a) Imperial and Canon (b) Laws approve the living of *Jews* amongst Christians, and why it should be thought unlawful amongst us, I know not.

(a) *Leg. ultima Cod. Judæis. & ibid. Leg. nullus* 14.

(b) *Extra de Judæis. Can. sicut, &c. Vide Bodinum de Repub. l. 3. p. 546. Edit. Francof. 1594. Et Auctores ibi in margine allegatos.*

6. Our Merchants live and converse with *Jews* (nay *Turks* and *Pagans*) abroad, and therefore why may not *Jews* converse with them here? seeing that there is less Danger that a few *Jews* should live amongst many Christians here, than that a few Christians should live amongst many *Jews*, *Turks* and *Pagans* abroad.

2. *Incommodum*. The Second thing proposed (which might render the admission or toleration of the *Jews* unreasonable) was the *Incommodum*, the Harm or Disadvantages which might come

come to Christianity or Christians by their company and conversation : For if indeed the admission, and tolleration of them were disadvantageous to the Gospel, and really tended to the abolition or diminution of the true Faith, or the subversion and hinderance of Christianity, it were certainly neither pious in the supreme Magistrate, nor prudent to admit them ; but he ought (in this case) rather to expell them if they were here, than readmit them, now they are away : seeing he is, *Non solum Reipublicæ, sed & Ecclesiæ Nutricius, qui non solum Civilitia, sed & Sacra procuraret*, being *Custos utriusq; Tabulæ* ; a sacred Obligation lying upon him by the Law of Nature and Nations, to be vigilant and cautious ; *Ne quid detrimenti capiat Ecclesiæ*. But on the other side, if the civil State may be advantaged by their admission, and the Church secured against such pretended Danger, then

(ex

(*ex hoc capite*) there is no Reason but they may be admitted.

And that there is no such Danger which might rationally hinder their admission, I am induced to believe,

1. Because, if there had been any such Danger, the Apostles would never (which yet they † did) have permitted and approved the Christians living and conversing amongst the *Jews*.

† As above, 1 *Pet.*
3. 1. & 1 *Pet.* 2. 12.

2. It hath been the constant and continued Practice of *Christendom*, ever since to this Day, to admit *Jews* to live amongst Christians, and why we should pretend more Danger (in this particular) than either the Apostles or the Christian World ever since, I understand not.

3. 'Tis true they have been Bani-
shed out of (a) Eng-

(a) *Thom. Stubbs.*
ubi supra in Joham.

Romano Eboracensi Archiepiscopo. Anno 1291.

land

(a) *Ad Annum Christi*
1252. pag. 861.

Vide Statutum de
Judaismo. Anno 18.
Edwards 1.

land and (a) France,
and some other Coun-
tries, but it was not
for matter of Faith but
Fact, not for their Re-
ligion, that they were *Religione Ju-*
dæi but for other crimes, and enor-
mities, as their Blaspheming Jesus
Christ, Crucifying Children in oppro-
brium Christi, Violating the *Pacta con-*
venta and Capitulations of their Ad-

(b) *Statut. de Ju-*
daismo Term. Hillar.
Anno 18. Ed. 1.

tute of their Banishment and by our

(c) *Vid. Chronicon*
Joh. Brompton in Hen.
1. pag. 1005. lin. 53.

Et in Hen. 2. pag. 1043. & pag. 1050. lin. 38. Hen. de
Kinghton de Eventibus Angliæ. lib. 2. pag. 2394. lin. 17.
& lib. 3. pag. 2452. lin. 58. Et ibid. lib. 3. cap. 1.
pag. 2466. lin. 16.

mission, &c. as plainly
appears by the (b)
Preamble to the Sta-

(c) Historians gene-
rally.

3. It is the Judgment of an emi-
nent Divine both for Learning and
Moderation, that there is not much
Danger

Danger that the *Jews* will subvert any or much endeavour the seducing of others to their Religion, (and he hath it out of *Osiander* and *Capito*, two Persons of eminent Note in their time) and he gives his Reason,

(a) *Quia Judæi antiquitus, etiam stante eorum Politiâ ante Chri-*

(a) *Philip. Melancthon. Epist. 68. (In Edit. Corn. B.) pag. 75. Epistolar. lib. 1.*

stum natum, si Civitatem aliquam, aut Populum bello devicissent, legem Mosaicum ipsis non imponebant, (legem enim illam ad Gentes pertinere non putabant) sed solum ut relictis Idolis, Deum unum colerent, & præcepta Noachida observarent.

And indeed as we find not in any Story that the Jews have been active to gain Profelytes, so we do not find any considerable number of Men in any Country which have apostated from Christianity to Judaism. And the Reason of this may be (besides the senseless irrationality of their Worship and Pretences for it, and

the *Odium* that lies upon them universally as being hateful to the Christian World) because they are a dispersed and vagabond People, Slaves wherever they come, obnoxious to the Will of those Princes and States in whose Territories they live ; and so want all those temporal advantages, which might allure Profelytes, having no Jurisdiction or Authority any where to Protect themselves, much less others who shall desert their own Profession to embrace theirs : So that in all likelihood (considering the Evidence of Truth, and the very many Advantages which the Professors of Christianity have above that of Judaism) by the Readmission of the Jews, the cohabitation and conversation amongst Christians, they may be sooner converted to Christianity, (God blessing the means) than Christians seduced into Judaism.

And

And something we have to this purpose in Sacred and Prophane Story. In the time of

Queen (a) *Esther*, the Jews by (her means) had infinite Honour and Priviledges in the

(a) *Annum Mundi*
3495. *Ante Christum*.
509. *Vide Fa. Ussé-*
rii Armach. Annales
Mundi. Ætat. 6. Ad
Ann. Mundi. 3495.
pag. 163.

Persian Monarchy, gained for them (by her) of *Abassuerus* (*Darius Hystaspis* was the Man) her Husband, *Adeo ut multi ex populis terræ facti sunt Judæi*, saith the (b) Text, and

(b) *Ester* 8. 17.

the Reason is rendered, *Quoniam pavor Judæorum super eos erat*. It was their great Priviledge, and secular Advantages which made many turn Jews; But now, as their Religion is absolutely out of Date, and their Misery more, so the Fear that any should turn to them is less. Nor do I find that when that Jewish Common-wealth was in its Glory, they compelled any to be of their Religion, no not those who

(a) *Vide quæ habet
Grotius de jure Belli.
lib. 1. cap. 1. §. 16.
p. 7. Ex Deut. 33. 4.
& Levit. 22. 25.*

lived amongst them
and (a) were uncir-
cumcised (for such did
live quietly, and were
permitted so to do)
amongst them. Nor only so but they
were very scrupulous in admitting
those Profelytes which did voluntari-
ly come unto them. As will fully ap-

(b) *Jo. Selden De
jure naturali, & Gro-
tium apud Hebræos.
lib. 2. cap. 2. & ibid.
cap. 4.*

(c) *Joseph. Origini-
um. lib. 13. cap. 17.*

pear by a large Dis-
course of Mr. (b) *Sel-*
den's to that purpose.
And though we find
in (c) *Josephus*, that
Johannes Hyrcanus
commanded the whole Nation of the
Idumeans to be circumcised, yet that
was because they were of the Seed of
Abraham, and so (as his ἐκγονοὶ and
Posterity) bound to be circumcised.

(d) *Geograph. 1. 16.*

(e) *Περὶ Πό-
λεων 60. Ἰδ-
μαίων.*

(f) *Lib. De differ-
entia Ver.*

Whence it is that even
(d) *Strabo*, (e) *Ste-*
phanus and (f) *Ammo-*
nins do reckon them
for

for Jews. But if it should be otherwise with the Jews now, if they should be solicitous and busie to seduce any to their Religion, the Prudence of the State may by the Capitulations of their Admission, tye them to the contrary, and make such Seduction (if voluntarily attempted by them) a Forfeiture for their Priviledges, and so secure the Publick as to that particular.

3. *Scandalum*. For the third thing which might make the admission of the Jews unlawful, to wit, *Scandal*; I conceive the case will be more plain than the former: For though I know not what Scandal some may take (who are hardly pleased with any thing the Publick Magistrates do, which suits not with their ends and interest) yet I do not see any colourable Reason; why the Readmission of the Jews into this Nation, should by any sober and intelligent Person, be thought Scandalous, (*Scandalum da-*

tum I mean) or be a ground of just Offence to any.

And that this may appear, I reason thus, If the supreme Magistrate by readmitting the Jews, give a just ground of Scandal, then it is either to Foreign States abroad, or their own Subjects at home, but neither of both can rationally be said.

1. Not to Foreign States abroad, for there neither is, nor hardly ever was any Kingdom or State in Christendom, which sometime or other hath not admitted them : Sure I am most do now, and certainly such States have no just Reason (nor can have) to condemn us, for that which they do themselves.

2. Not to their own Subjects at home ; and that this may more distinctly appear, I consider

1. That in relation to humane actions to be done, or not to be done by us, all things in the World are,
and

and (of necessity) must be ranked in one of these three Particulars ;

1. Some things are absolutely good.

2. Some are absolutely bad.

3. Some are *Res mediæ*, and indifferent.

1. Things absolutely good are such, as are *Sub præcepto divino affirmativo*, (*naturali vel positivo*) and these of necessity (*necessitas præcepti*) is meant, must be done, and without sin cannot be left undone by any Man in the World, (no one rational *individuum* excepted; For I speak not of Children or natural Fools who want the use of Reason) if they be *juris naturalis* : nor if they be *juris positivi*, can they (without sin) be left undone by any Man to whom that positive divine Law is sufficiently reveal'd. Now I take it for manifest, and a truth (which I believe)

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lieve) will be granted by all sober Men ; that neither the admission or exclusion of the Jews is absolutely good, or *sub præcepto divino affirmativo* (*naturali vel positivo.*) For

1. If their admission were a thing absolutely good, and *sub præcepto divino*, then all those who admit them not (and much more they who eject them) would be found guilty of a manifest violation of the Law of God, which no Man ever said, nor with any congruity of Reason can say.

2. If their exclusion were absolutely good and *sub præcepto divino*, then all those who have admitted them (and the Christian Churches in all ages, even those of the Apostles themselves have done so) will be found guilty of a great sin, and manifest transgression of the Law of God, and then the primitive Christians, and the Apostles themselves must of necessity be guilty of

of this Crime, which neither is, nor can justly be affirmed.

2. Things absolutely bad are such as are *sub præcepto Dei negativo naturali vel positivo*, forbidden by God, and and so absolutely unlawful for us ; and that the admission of the Jews into this, or any other Christian Commonwealth should be thus unlawful, and so *malum per se*, I believe is not, and I am sure cannot with any congruity be asserted.

1. Because there appears no Law of God (natural or positive) against such admission, he that thinks otherwise let him shew it.

2. If admission of the Jews into a Christian Commonwealth, if cohabitation and an outward and civil conversation with them, had been an evil of this high nature ; then, as is before said, the primitive Christians and Apostles, nay our blessed Saviour himself, which is impious to think, had been

been guilty of it ; who all their lives permitted, and practise such communion and outward conversation with the unconverted Jews.

3. Well then, let the admission and exclusion of the Jews be (as most manifestly they are) amongst the *Adiaphora* , the *Res mediæ*, those things we call indifferent, and in themselves neither morally good or bad, but such as may be either, according as they are cloathed with several circumstances ; Then I say if the supreme Magistrate, (who is trusted with the managing of publick affairs) think it fit to admit the Jews into this Commonwealth (and of the conveniences and inconveniences of their admission, he only (and not the People) is to judge) and by a Law authorize their admission ; then (as to the Subjects) their admission is no more a thing of indifferency, but necessity : No more matter of Offence or Scandal, but Obedience ;

ence ; such as we who are Subjects, should not dispute, but obey. So that if any Man take offence , or be scandalized at it, it will certainly be *Scandalum acceptum non datum*. And so not the fault of the Magistrate but of the Men(if there be any such)who are irrationally offended. And this will manifestly appear,if we consider,

1. The Magistrate in reference to the People under him.

2. The People in reference to the Magistrate, and in reference one to another.

1. For the Magistrate,as he stands in Relation to the People, it is certain (by virtue of that supreme authority with which he is entrusted) he is to judge what things are convenient or inconvenient for the People.

2. When after serious Debate and mature Deliberation, (all circumstances

ces

ces considered) he shall really think and judge that this, (which before was indifferent and no way enjoyned) is *hic & nunc* best for the publick good, then he justly may (by his legislative Power) enjoyn the doing of it, and by a positive Law bring a just Obligation upon the Subjects to do accordingly.

3. Nor is this all, he not only may, but is bound, and (if he will do his Duty) must do so, and that by the Law of Nature, and from the very first Principles of his Duty, and that Magistracy he is intrusted with, for it being certain, that *Salus Populi suprema Lex est*, and by his great and sacred Office, an Obligation lies upon him (by all honourable and honest means) to procure their good, so far as in him lies : if he see such things, (though at present indifferent) would much conduce to the Publick Good, if they were enjoyned, and obey'd
accord-

accordingly. I say, in this case, if he do not command them, he neglects his Duty, and violates that sacred Obligation which binds him to it : So in this present case, if (all things maturely considered) he impartially judge the readmission of the Jews will really and indeed tend to the good of the Publick, he is bound to readmit them, and he should be wanting to his Duty in promoting the Interest and Good of the Common-weal, if he should do otherwise.

4. Nor is it possible that any Scandal or Offence taken by the People, should be of that moment as to hinder him. And the Reason of this is manifest, because the Obligation of doing his Duty, and procuring the Peoples Good, lies so indispensably upon him, that he must not omit it, though they be never so much displeased, seeing (if it must be so that one party will be displeased) it is far more
more

more rational to hazard the Peoples, than Gods Displeasure : For if he do it, and the People be scandalized and offended at it, that Scandal is only *Scandalum acceptum*, groundless, and (on his part) altogether causless. But if he neglect his Duty and do it not, God is really and justly offended. So that in short, (if after all things considered) the Wisdom of the State shall judge it convenient and beneficial for the Publick to readmit the Jews, (and we are bound in Charity to think that unless they judge so they will not admit them) then they are in Duty bound to do it, notwithstanding any Displeasure (or pretended Scandal) which their Subjects will or can conceive against them for so doing : It being evident that no supreme Magistrate is to neglect the doing of his Duty, or using his just and lawful Liberty and Authority in putting that in Execution, which upon impartial judgment

judgment and deliberation, he conceives convenient for the good of the Common-wealth. It is I (confess) to be wished, and heartily prayed for, that all Men would (with a charitable Opinion and obsequious Obedience) rest satisfied with the deliberate resolutions and constitutions of their Magistrates really intended for the publick Good ; and (no doubt) all sober and moderate Persons will do so. But this is rather to be wished than hoped for. The understandings, aimes, and interest of Men being so different, that supreme Governours in no Age or Country did ever satisfy all, no not with their best Actions, and therefore it is not to be expected now. But this pretended Scandal and Dissatisfaction of some, should (in reason) be no *Remora* or Hinderance to the Magistrate to go on, and according to his best Skill and Judgment, promote the Good of all. And if this
be

be not admitted, it will unhinge and enervate all Governments whatsoever : For the Command of no King ever pleased all his Subjects, of no General all his Souldiers, of no Father of a Family all his Children and Servants, of no Schoolmaster all his Scholars: and yet this never did (or indeed should) hinder any King, or General, or Father, or Master to give Commands, such as in prudence they thought convenient, and being given, to put them in Execution. The truth is, it were impossible for any Government to subsist if supreme Magistrates should make no Law, or civil Sanction, till all their Subjects were satisfied.

5. And as evident Reasons may, (in this Case of readmitting the Jews) be drawn for the Liberty, which (by the Law of Nature and Scripture) is inherent in the supreme Magistrate's, and his just Authority to determine of indifferent things, to prove that he gives

gives no Scandal in case he use that Liberty and Authority in readmitting, and giving Priviledges, (such as in prudence he shall think fit) to the Jews: So there may be further Reasons (drawn for the same purpose) from the consideration of the Subjects in relation to the supreme Magistrate. For as they stand in this Relation, there lies an Obligation upon them, by the Law of God and Nature, to yield cheerful and willing Obedience to all the just Commands of their Governours, (as this undoubtedly is) and then where Obedience is morally due, Offence and Scandal is in vain pretended. It is irrational and irreligious too to pretend Scandal for the neglect of my Duty, and so evidently disobey God, and my Governours, upon pretence, I am afraid so to do. But enough (if not too much) of this. He that would have more Reasons from the Nature of Scandal may find

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enough in the best (a) Casuist of our Nation, (and may be of any Nation else) where although his Discourse in *Hypothesi*, be applied to other particulars, and a different Case of Scandal from this now in question, yet what he hath said there in *Thesi*, is as applicable to this, as that.

6. Now concerning this Toleration of the Jews, we may further enquire ;

1. What Power is to give this Toleration.

2. In what things they are to give it.

3. For what Reasons and Motives they are to do it.

4. How far, and with what Restrictions and Limitations this should be done.

For

For the First, notwithstanding what

(a) *Erastus* with his

(b) Followers, and

(c) *Selden* of late have

said, I believe it to be

a manifest Truth, That

in every Christian Na-

tion there are (or should

be) two divine distinct Powers.

(a) *Tho. Erastus in*
Explicatione gravissi-
mæ Questionis, &c.
Pes. clavii Anno 1589.

(b) *Vide Tho. Hobbs*
in his Leviath. Part 2.

(c) *Joh. Seldenus li-*
bris de Synedrionis Ju-
deorum.

1. Sacred or Spiritual.

2. Civil or Temporal.

In both which Powers we may con- sider.

1. *Principium a quo*, the Principle and immediate Cause from whence they flow, and from whence they are derived to Men, and thus the Temporal Power is immediately from God, as he is the great Maker and Monarch of the World, by whom Kings reign, who communicates his Power and Name to Magistrates, so that they

36 The Case of the Jews.

are not only (Rom. 13.) Διάνοχοι τῷ Θεῷ,
his Delegates and Substitutes, but

(a) Θεοὶ Gods too

(a) Vide Exod. 22.

28. Joh. 10. 34.

(Psal. 82.) I have said

ye are Gods. 2. The

Spiritual Power is from Christ, as
Head of his Church, his Father gave

him, (b) All Power in

(b) Matth. 28. 18.

Heaven and earth, and

some of that Power he hath communi-
cated to his Apostles and Ministers,
who are his Ambassadors, Pastors of
his People, and Stewards of his House-
hold.

2. *Subjeſtum in quo*, the civil Power
in the civil Magistrate, the sacred Pow-
er in the Ministers.

3. *Finis in quem tendunt*, the one
being ordained to procure our tempo-
ral Good here, the other our eternal
Good hereafter.

This

This premised, I say, That the Jews neither desiring, nor intending to be Members of our Church, but only of our Common-weal ; their Admission or Exclusion depends only on the Civil Power. For the Command of the Common-weal (as it is a civil Society) being solely in the Civil Magistrate, to him only it will belong to judge whether it be fit to admit or exclude them, and to do accordingly. 'Tis true the Kingdom of Christ (his Church) is not a Temporal but a Spiritual Society, which he rules inwardly by his Spirit, outwardly by his Ministers (Bishops, or Presbiters, or Pastors, call them what you will) who are his Ambassadors and Stewards, who have a Law to rule by the Gospel of Jesus Christ. To these he hath committed the Keys of his House and Kingdom, so that they (and they only) can admit Men into it by Ba-

prism, and exclude by *Excommunication*. The end and use of a Key, being to open and shut, and these Keys committed to them, they only have the use of them, and according to the best of their Skill, are to use them accordingly. On which Principles it follows, that the Jews neither being Christians, nor (for ought appears) intending to be, their Admission or Exclusion no way belongs to the Spiritual Governours of the Church; their sacred Jurisdiction being only over the Household of Faith (the Christian Church) of which the Jews are no part, and therefore not under that Jurisdiction. So that I doubt not but the Admission or Nonadmission of the Jews belongs only to the Civil, not Sacred Power.

2. The Second Query is, In what things they are to be tolerated? And to this I say,

1. That

1. That there is an *Antithesis* and *Opposition* between *Approbation* and *Toleration* of any thing ; so that (in propriety of Speech) we *approve good, tolerate bad things*. And then when the Question is about the *Toleration* of the *Jews*, we suppose that there is some evil in them, which for some Reasons, some Ends and Purposes is to be tolerated in our Christian Common-weal.

2. That evils may be of two sorts,

1. Such as are against the Law of Nature. 2. Such as are against positive Law ; that we usually call *the Law of Nature*, this the *Law of Scripture*, both Divine. For in this Case the humane Laws come not in Consideration : For if it please the supreme Magistrate, to admit them by a Law, then all humane Laws of this Common-weal (if there be any against

them) are *ipso facto* null, and abrogated : And so their Admission (the will of the State legally declared for it, being supposed) cannot possibly be against any positive Law of this Common-weal.

2. Now then for the first sort of evils, such as are against the Law of Nature, and are *intrinsecè* & *ex natura sua mala*, these no Magistrate may tolerate. The Obligation of the Law of Nature is so inviolable, that God himself in all the Old Testament ne-

(a) Vide Grotium
de Jure Belli. lib. 1.
cap. 1. §. 10. &c.
Suarez Aquinatem.
Pet. a sancto Joseph.
&c. De legibus.

(b) Vide Grotium
ubi supra §. 17. p. 9.
ubi contrarium non si-
ne errore asserere vi-
det ?

ver gave any (a) Dis-
pensation of that Law,
nor (b) Toleration of
any sins against it,
much less can the Ci-
vil Magistrate who is
but his Vicegerent and
Deputy ; and neither
hath (nor can have)

any Commission to do more than his
great

great Lord and Master. 'Tis true, the Magistrate is *Δικαστὴς τῆς πόλεως*, Gods Minister and Vice-gerent, and so *Custos utriusque tabulæ*, armed with the Sword of Justice, which he must not bear in vain, but is bound by his place, and that sacred calling he carries to be *Ἐκδικῶς* Rom. 13.

αἰσ ὀργῆς, a Revenger of such Sins, and a Punisher of Malefactors against the Law of Nature.

And that we may apply this in Hypothesis, to our particular Case of the Readmission of the Jews, I say,

1. That in the (a) Law of Moses and the whole old Testament, there is nothing contained to the contrary, or repugnant to the Law of Nature.

(a) Vide Hug. Grotium de Jure Belli. lib. 1. cap. 1. §. 17.

2. That

2. That this Law of Moses, and the old Testament, is (or at least should be) the adequate rule of the Jews Religion; and therefore so long as they keep to this, there is no thing in their Religion which is intollerable on this Account, as being against the Law of Nature.

3. But if there be any thing in their Religion (as now they profess it) superinduced by Error or Custom, which is indeed against *Jus naturale*, that should not be tolerated in this, or any Christian Common-wealth. And if the Christian Magistrate tye them to abstain from all Idolatry, Blasphemy, Murther, Adultery, and all such other Sins against the Light and Law of Nature, he tyes them to no more, then they (in their flourishing State of their Common-weal) ty'd others. For though they did not require

quire of their Profelytes (those of the Gate I mean) to submit to the positive Law, and Precepts of (a) *Moses*, yet they did universally require of them to abstain from Blasphemy, Idolatry, and all natural Injustice, as is manifest in *Josephus*, the Sacred Text it self and their Rabbinical and Talmutical Writers. So that if Christian Magistrates do (as indeed they should) denie any Toleration of such unnatural Enormities, they have Reason to rest satisfied with it, seeing no more is denied to them in ours, than they denied to others in their Common-wealth.

(a) *Videffis Job. Selden de Jure naturali & Gentium apud Hebræos. lib. 2. cap. 2. pag. 138, 139. & ex R. Mose Maimoinde & R. Mos. Mikotzi.*

Dub. But it must be said, *Usury*, *Poligamy*, and the *Marriage of a Sister*, was (by the Law of *Moses*) permitted to them, and therefore the Practicers of some things against the Law of Nature.

Sol.

Sol. To this I say, 1. That 'tis true, that *Aristotle* and divers other Philosophers, conceived Usury to be against the Law of Nature ; and many Divines of eminent Note have thought (and published their Opinions to the World) That both *Usury* and *Poligamy* and *marrying a Sister*, are

(a) *Vid. Aquinat. Quest. 94. Art. 5. Commentat. ibid. Vasquez. in 1. 2. Disp. 150. Fran. Suarez. de Legibus lib. 2. c. 5, 6. &c. Fran. Duacenum ad Tit. de Just. Et Jure c. 5. Hug. Donellum. Comment. de Jure Civili c. 6, 7. Ludov. Melin. cum de Justitia. Tract. 1. Disp. 4. pag. 10.*

so too. (a) Yet 2. This I conceive to be a manifest Mistake, for it will evidently and undeniably follow, God permitted *Usury* and *Polygamy* and *marrying a Sister* to the Jews by a positive Law, therefore neither of them is, or can be against the Law of Nature, it being a demonstrative Truth, and generally confessed by the best Lawyers, Schoolmen

men and Casuists, That
God (a) never did, nor
(*manente naturâ huma-*
nâ eadem) could dis-
pense with the Law of

(a) *Vid. Petrum a*
Sancto Joseph. in Idea
Theologiae moralis.
Lib. 1. De Legibus.
Cap. 2. Resoln. 4.
Pag. 14.

Nature. So that I think that Assertion of (b) Grotius,
(and many before him) to be a certain Truth,

(b) *Grotius de Jure*
Belli. lib. 1. cap. 1.
§. 17. pag. 9.

That nothing was permitted to the Jews
in the Old Testament, which was against
the Law of Nature ; nor should any
such Sins be tolerated now.

2. The Second sort of Sins are, such
as are against some positive Law of
God, and of such the Jews must needs
be guilty (I mean such of them, (and
only such) to whom the Gospel has
been sufficiently reveal'd) as denying
the blessed Trinity, and the whole
Gospel of Jesus Christ, That I may
not be mistaken in this Assertion, I
say,

1. That

1. That sufficient Promulgation, is absolutely necessary to the Obligation of any positive Law of God, or Man, Humane or Divine, it being morally impossible that any Man should be bound to obey the Laws of any Authority, till it be sufficiently evidenced to him that indeed they are the Laws of such Authority.

2. If then there be any *Jews* in any part of the World (as I doubt not but there may be many) to whom the Gospel (or any part of it) is not sufficiently revealed, then I dare pronounce them innocently ignorant of all, or so much of the Gospel as hath not been sufficiently discovered to them, and Christians guilty, who have taken no more Care and Pains to discover that Truth to others, of which they were abundantly convinced themselves. And upon this ground I think that

that there lies a sacred and heavy Obligation upon Christians (as being bound to seek the Glory of God, the Propagation of the Gospel, and the Conversion and Salvation of their Brethren) to endeavour the Conversion of the *Jews*, which certainly cannot be by banishing them from all Christian Common-wealths. And therefore they must either go to the *Jews*, or bring the *Jews* to them, that so they may win them to Christ by the Innocence of their Lives, and the Truth and Evidence of their Doctrine. Now these two are both one (as to our present Case and Purpose) for certainly if it be lawful for us to go, and live amongst the *Jews* to Preach the Gospel, then it will be as lawful to bring them hither, and let them live amongst us to the same Purpose. And so the bringing in of the *Jews* will not be so irrational a thing as some phantasie (for 'tis no more) very strongly,

ly, and would make the World believe their Readmission to be guilty of (I know not what) Iniquity.

Dub. But it may (and may be will) be said, That the whole Gospel was sufficiently promulgated by our Saviour and his Apostles, that their Preaching, and innocent Life and prodigious Miracles done in Confirmation of it, and the Obfignation of it by our blessed Saviours Death and Resurrection were Evidences enough, that it was a divine Law, and therefore obligatory, both to them that heard it, and their Posterity; so that it needed no more Promulgation, but is still obligatory by the Force of the First: as *Moses* his Law being once miraculously promulged in Mount *Sina*, brought an Obligation on those that heard it and all their Posterity.

Sol.

Sol. To this I say, that 'ris a manifest and certain Truth, That the Publication of the Gospel by our Saviour, and his Apostles, was a Promulgation of it abundantly sufficient to all those who heard and saw those divine Persons, their Preaching and Miracles, I say personally to them and properly, *ex per se*, to none else unless τῇ παρε-
 ὄντι, ἢ τῇ μαρτυρίᾳ τῶν ἐλεπόντων (as the Greek Scholia tell us) by the Tradition, and constant and faithful Testimony of those Eye-witnesses it had been carefully delivered down to Posterity. For suppose (which is not impossible) that all those who heard our Saviour's and his Apostles Doctrine and saw their Miracles, had concealed them from their Posterity, so that they had never heard any thing of them, Then I say their
 *ἐκγόνοι and Descendents (who neither heard the Doctrine, nor personally saw the Miracles, nor had them

E any

any way delivered to them by the Tradition or Testimony of their forefathers) were no way obliged to believe any Gospel-Law, as never having any such Law sufficiently promulged, and made known unto them; without which it was impossible they should know those Laws; and by consequent, impossible they should be obliged by them. So that it is not the first miraculous Promulgation of the Gospel, which does *per se*, and of its own Nature oblige us to Faith, and Evangelical Obedience, but the Continuation of it down to us, by the Tradition and constant concurring and faithful Testimony of those that were Eye-witnesses, and those that followed them. And if through the impiety or negligence of this (or any other) Age, this Continuation of the First Promulgation should cease, then the Obligation to believe the Gospel would cease also (as to our
Poste-

Posterity) unless it ceased by their Fault, or were otherwise made sufficiently known unto them. Whence also it follows, that the Sin and Infidelity of those *Jews* who saw Christ's Miracles is far greater (as being against such demonstrative Evidences of Truth) then the Infidelity of the present *Jews* whose Evidences for Conviction (though enough) are much lesser, and by Consequent their Infidelity not so great. And hence it further follows evidently enough, that seeing the Apostles themselves held Correspondence, and had Communion and civil Conversation with those *Jews* whose Obstinacy and Infidelity was far greater (as standing in Contradiction to all those miraculous Works and divine Testifications of Evangelical Truth) certainly we may have our Conversation and civil Communion amongst those *Jews* whose Obstinacy and Infidelity

(though great enough) is far less. And then it will be manifest that their Readmission into our Christian Commonwealth (with those bounds and limitations which we believe and hope the Piety and Prudence of the State will put upon them) is not in it self unlawful *Quod erat dicendum.*

I have stood the longer upon this Discourse, because I believe, that from these and such like Principles, an evident and fundamental Reason may be given, why Sinners against the Law of Scripture and positive Evangelical Sanctions may be tolerated in a Christian Commonwealth; when Sinners against the Law of Nature are not, nor indeed can be.

Quære. Let the Query then be this; Why may a Christian Magistrate tolerate Sins and Sinners against the

the positive Law of the Gospel, and not against the Law of Nature?

Sol. In answer to which Query I shall crave leave to say Two Things.

1. *De facto*, That it ever hath been so, in all Ages of the Church all Christian Kings and Commonweales (at least of which we have any story left) giving Toleration to the *Jews*, notwithstanding their Infidelity, and Non-submission to the Gospel : and yet never tolerated them (or any else) in any Sins against the Law of Nature. So that they might disbelieve the Gospel *impune*, and without Punishment ; but if they were guilty of Blasphemy, Idolatry, Adultery, Homicide, Theft, or any other sins against the Light and Law of Nature, the Laws did as severely vindicate these Sins in them, as any other Subjects.

2. *De jure*, that rationally and upon good grounds of Justice, it might be so ; this is a harder Business, and of that Difficulty, that I find not one of those Casuists, or other Writers, (who have writ of this Subject) so much as offer at a Reason of it ; that is, All Christian Common-weals have ever severely and indispensably punished Sins against the Law of Nature, and yet even then tolerated Infidelity, and other Sins against the Law of Scripture.

Now (I conceive) that the fundamental Reason of this Difference (as to the Vindication of some, and Toleration of other some Sins) must be taken from the nature of the Sins so vindicated or tolerated for.

1. Sins against the Law of Nature are evident, and manifestly such, and cannot

cannot possibly admit of any Apology in any Persons who have the use of Reason (for in Children and Ideots the Case is otherwise.) It is a manifest Truth and a received Principle, both amongst Philosophers, and Lawyers, That *Ignorantia Juris Naturalis non excusat a peccato.* So that if *Ti-tius* commits Murder, Adultery, or Idolatry, &c. we are sure he is a Sinner, and the Magistrate may safely punish him for it, seeing there is no possibility of any pretence whereby he may render himself excusable either from the Sin, or suffering for it.

2. But then Secondly, for those Sins against the positive Evangelical Law, the Case is much otherwise, for

1. No positive Law of God (or Man) brings (or can bring) a just Obligation upon us, till it have a sufficient Promulgation.

2. The sufficiency of such Promulgation is not easily known, for that may be sufficient Promulgation to one, which is not to another, according to the different measure of Parts and Abilities in those to whom it is promulged. For those to whom God hath given a larger measure of Understanding and Learning, may sooner come (unless they be wilfully obstinate) to a Knowledge of the Truth of the Gospel, and of those Reasons which may convince them of it; and then an Obligation comes upon them to believe accordingly, and if they do not they sin: whereas others of no Learning, and less natural Abilities, may innocently disbelieve, till further means (proportionable to their Capacities) be used for their Conviction. Now this Difficulty of knowing when the Promulgation is sufficient, and consequently when

when Infidelity is a Sin (for till this time 'tis a Calamity, not a Crime.) should make Magistrates very cautious not to precipitate the Punishment of such misbelieving Persons: For seeing in all such Punishments there should be *Cognitio culpæ*, before there can be *Inflictio Pænæ*, he that punisheth before he be certain that the Person so punished is guilty of the Crime, doth an Act that may be just, but certainly he is not just in doing it.

3. But that which adds more Difficulty yet is this ; That no Promulgation of any positive Law is sufficient till the Persons be convinced to whom it is promulged , (unless through their own Perverseness, for Ends and Interest, they willfully hinder such Conviction.) Now whether the Infidelity of the *Jews* arise from the Perversity of their own Wills, or
from

from their Infirmary and Want of sufficient Preaching and Promulgation, it is very hard (if not impossible) for any Magistrate to know; and till it be known, they cannot be justly punished for their Infidelity, which neither is (nor can be) Sin in them (nor any body else) till after sufficient Promulgation they wilfully reject the Gospel. Now this great Difficulty (and almost Impossibility) to know when they wilfully (and so criminally) reject the Gospel, makes it very difficult proportionably, and almost impossible, for any Magistrate justly to punish them for such Rejection.

4. We commonly say (and there is much Truth in it if rightly understood) that the Mysteries of the Gospel are such as cannot be understood

flood, and (a) assented to without the special Assistance of the blessed Spirit of God. So that those who want this Assistance, or

(a) John 6. No man can come unto me unless the Father draw him.

And John 15. 3. Without me ye can do nothing.

such a measure of it as may be sufficient to overcome all opposed Difficulties, cannot possibly believe, and then it will be very questionable, whether Infidelity in such be a Sin, it not being in their Power (without such Assistance) to believe. This in Scripture is called *the opening of the heart*. So when Saint Paul Preach'd, *Lydia* believes, others did not, and the Reason is given in the Text, *God opened the heart*

of Lydia so that she attended to those things

Acts 16. 14.

spoken by Paul. Now as the opening of her heart was no Merit or Act of Virtue in her (it being the Work of God upon her Soul, and she only passive

five in that particular) So the not believing of others whose hearts he was not pleased to open might possibly (at least for some time till they had heard him further and seen his Miracles) be no Sin in them. However it will be sure enough, that seeing no humane Magistrate can know whether the *Jews* now have such Assistance, or what Measure of it they have, it will be hard for them to punish, least in so doing they may punish them for not doing that which is impossible for them to do ; which with what Justice or Warrant from God's Word, they can do, I know not. And here I shall transcribe a

Passage in (a) *Grotius* (casually by me, but happily met with) if I mistake not, very pertinent to this purpose,

(a) *Hug. Grotius de Jure Belli.* lib. 2. cap. 20. §. 48. pag. 345. *Vide etiam Annotationata ad dictum §.*

Doctrina Evangelii ab his qui nunc eam audiunt penitus in animum addmitti

admitti nequeat, nisi Secretis Dei Auxiliis accedentibus, quæ sicut quibus dantur non dantur in operis alicujus mercedem: ita si quibus negantur, aut minus largè concedantur, id fit ob causas non iniquas illas quidem sed plerumque nobis incognitas ac proinde humano judicio non Punibiles. And then he adds many things out of Scripture and Antiquity to the same purpose, That neither *Jews* (nor any body else) is (by Punishment) to be compell'd to a Belief of the Gospel, (that's a *Turkish* slavish means, which may besit *Mahomet* to promote the *Alcoran*, but certainly contradictory to the Laws of Christ, and the Meekness of Gospel Dispensations.)

By what hath been said, I believe it may appear in part that the Toleration of the *Jews* in this, or any Christian Common-weal, is not in it self unlawful, either *in ratione inhonesti*

nesti incommodi or *Scandali* ; but that as *de facto*, they have been ever tolerated in Christian States, so *de jure* they may still.

So then the Readmission of the Jews is in it self indifferent, yet may be made morally good or bad according to the several Ends, the different Limitations and Qualifications of their Admission. First, The Ends of their admission may be either

1. Civil,
2. Or Sacred and Religious.

I. For the civil end of their admission, that is in general the Emolument and Benefit of the Prince, and Common-weale. And though

(a) *In compendio manualis*. lib. 5. cap. 17. concl. 1. p. 510. (a) *Becanus* the Jesuite (with a transparent piece of Hypocrisie) condemn this end as unlawful,
it

it is evident that his great *Jupiter Capitolinus* of Rome, as (a) one said long since of some of his Predecessors) makes this an end (and a principle one two) of their admission; and if he had no greater Faults, I should pardon this. For Secondly, 'tis manifest that the Supreme Magistrate may justly make this one end of their admission: For by his Place and Office there lies an Obligation upon him to preserve the Civil Interest of his Nation, and the Good and Benefit of the Commonwealth, and may propose it as an End by all honourable and honest means to be attained. Whence it is, that all Princes protect and encourage Trading, all Merchandizing, and Manufactures.

(a) Eubulus Cordatus in Epist. prefixa libro Nicolai de Olemangii, de corrupto statu Ecclesie.

2. The Sacred and Religious End of their Admission should be the Glory of God, and the Propagation of the Gospel, in the Conversion and Salvation of their Souls. And we are bound to endeavour this

1. By the natural Obligation of Charity, as they are Men, and so our Brethren, whose Good we ought to promote (especially that of their Souls) by all honest ways.

2. And more particularly as they are the *Reliquiæ* of Gods own People, concerning whom, and their Conversion, there are many gracious and glorious Promises in the Gospel, and it will be an Happiness to us if we have an hand in it.

It

It was a Saying of Martin Luther (a) *Se propter unum Judæum crucifixum omnibus favore Judæis.* And if we love them, and desire their Conversion and Salvation, (as in Christian Charity certainly we ought) then the way to effect that, will not be to banish them, and prohibit their Habitation amongst us, so compelling them to live amongst *Turks, Pagans,* or *Papists*; The Images and Idolatry of which last, hath undeniably been the greatest Scandal, and Remora, which hath long hindred them from being Christians. Whereas (if they be permitted to live amongst us) that stumbling-block will be taken away.

(a) M. Luther in Epist. ad Feselin. *Judæum Rosheimensem operum. Tom. 6. Ton. German. fol. 509. apud Balduinum Cassium Consciencie. l. 6. cap. 6. Casu 3. pag. 188.*

2. For the Conditions of their Admission, for the Restrictions and Limitations to be put upon them, a great deal of Caution and Christian Prudence is to be used, lest while we pretend their Good we do Mischief to our selves. For as to deny them all Liberty and Commerce with us, may be an Act of unchristian and indeed inhumane Cruelty ; So to give them too much, is an Act of Imprudence and Folly. And indeed we find some

(a) sober Men (not without good Reason) complain of the too much Liberty they have in some Christian Common-wealths. In short, what Qualifications and Limitations are to be put upon them, I shall not take upon me to determine, but leave that to the Piety and Prudence

(a) *Andrew Rivet.*
Comment. in cap. 23.
Exodi. pag. 95. col. 2.

dence of the State. Yet (with Submission) I conceive such Limitations as these will be convenient, if not necessary ; the rather because I find in our Histories, in the Imperial and Canon Laws, and in the old Capitulars and Canons of Councils, that such Restrictions have been anciently laid upon them. As,

1. No Toleration ever was, or *de jure* can be given them to profess or practice any thing against the Law of Nature.

2. No Toleration should be given them to speak any thing blasphemously or impiously against *Jesus Christ* and the *Gospel* : For though we may tolerate them in the Profession of a bad, yet not in that Blasphemy (a) of a good Religion.

(a) *Vide Rescript. Honorii & Theodosii. A. A. Anthemio. P.P. L. Judæos. 11. Cod. de Judæis.*

3. They never were nor should be permitted to circum-

(a) *Leg. Judei* 16.
Cod. de Judæis & *Fu-*
dæus. 18. *Ibid* & *Bas-*
ilicon. lib. 6. *Tit.* 54.
cap. 31.

cise (a) Children of
Christians, or seduce
any Christians to their
Religion : Let them

profess, but not propagate their Re-
ligion.

4. They were not permitted to

(b) *L. hæc valitu.*
Cod. de Judæis.

carry any Office (b)
or Dignity in the Chri-
stian Common-weal,
though (c) it seems that
sometimes even that
was permitted them.

(c) *Gloss. ad dict.*
L. verbo hæc. ex F.
de decur. l. gener. aliter
§. finali & *can. cum*
sit 16. *Extra de Ju-*
dæis.

5. They were not permitted in
any Suit or Difference between a
Jew and a Christian, to draw the

(c) *Leg. si qua.* 15.
Cod. de Judæis. Vide
Bartolum ad L. Judei.
8. *Cod. de Judæis.*

Christian, or his Cause
before a (d) Jewish
Magistrate : For 'tis

a ruled Case in the Imperial Law,
Judeus Actor vel reus, Forum sequitur Christianum.

6. They were never permitted to make Marriages (a) with Christians, and the (b) Glossator gives the Reason of it in

(a) *Hoc prohibent Imp. P. P. valent. Theodos. & Arcadius A. A. A. leg. Ne quis. Cod. de Judeis.*

Law, (c) *Quia matrimonium debet esse communicatio divini &*

(b) *Glossa ad dictam. leg. Ne quis.*

humani juris. Whereas a Jew and Christian being of different Religions cannot *communicare in Sacris.* And this is consonant to the Law of the Gospel, which forbids us to be (d) *unequally yoked.*

(c) *Leg. 1. F. de Rit. Nuptiarum.*

upon which grounds, I believe all Marriages with Papists to be unlawful, that is, *Fieri non debuit,* 'tis unlawful to make such Matches, though that *factum valet,* when

(d) *2 Cor. 6. 14.*

such a Match is made the Contract is valid.

(a) *Imppp. Theodosius, Arcad. & Honorius. L. Nemo. Cod. de Judeis.*

7. Their frequent
(a) divorcing their
Wives was tolerated.

For though *Moses* seem to suffer it, yet the Emperours by express Edict forbid it.

(b) *L. Nemo. Cod. de Judeis.*

8. By the Imperial
Laws (b) Polygamy,
and plurality of Wives
was not tolerated in them.

(c) *Vide Descriptum Constantini. A. ad Evagrium. P. P. Leg. Judeis. Cod. de Judeis. & Cod. Theodosian. L. 16. Tit. 8. Leg. 5.*

9. If any of the *Jews* turn *Christian* (by (c) Civil Law) in case the *Jews* endeavoured to reduce him, and maliciously injured him, they were to be burned for it.

10 They

10. They might repair their old Synagogues, but were not tolerated (by the (a) Roman Laws) to build new.

(a) L. Hæc valitura. Cod. de Judeis. § Can. Judei. 3. Et

Can. Car. Consuluit 7. Extra de Judeis.

11. They were not tolerated to have any Christian Servants, Nurses, or Midwives. Can. Præsenti. 1. Extra de Judeis. Ex concilio malis conenti.

12. By the (b) Canon Law they might not come abroad on Good Friday.

(b) Can. in nonnullis 15. §. In diebus. Extra de Judeis.

13. They were not permitted to wear Garments (c) exactly of the Christian Fashion, but were to have distinct Habits, that all might know them to be Jews.

(c) Leg. eadem.

(a) *Cap. Nullus &
Cap. omnes. Causa 28.
Quest. 1.*

14. They might not be (a) Physicians, or give Physick to any Christian.

15. They were not permitted to be of the Roman (b) Militia (though they were permitted to be Advocates) by the Rescript of Honorius, and Arcadius to Romulianus P. P.

16. The Jews being the greatest Usurers in the World, and believing they may justly take the highest Use they can get, (even *Usuræ centessimæ*, if they could have it) of us Gentiles, it is all the Reason in the World, they should be limited in this particular, and not permitted to take more of us, than the Law permits us to take one of another.

17. They

17. They should be enjoined to admit of friendly Collations and Disputations sometimes about Gospel Truths, and not obstinately to reject all means of Conversion, and Conviction, and Satisfaction of those seeming Reasons which keep them off from embracing the Truth: For there will be little hopes (or possibility) of their Conversion, if they be permitted obstinately to refuse all means of doing it.

But enough (if not too much) of this, I shall only add one old (a) Law concerning the Jews made before the Conquest (above 600 Years ago) and confirmed by the Conquerours amongst other the good Laws of Edward the Confessor, and so continued

(a) *Inter leges Edwardi Confessoris. leg. 29. In Edit. LL. Saxonicarum. Per Abrah. Wbelog. pag. 145.*

tinued Law (for ought I know) in all the Kings Reigns till the Banishment of the Jews, which was Anno 18 Edwardi 1. The Law is this,

Sciendum quoque quod omnes Judæi, ubicunque in Regno sunt, sub tutelâ & defensione Regis ligēa debent esse; nec quilibet eorum alicui Diviti se potest subdere, sine Regis licentiâ. Judæi enim, & omnia sua Regis sunt, Quod si quisquis detinnerit eos, vel Pecuniam eorum, perquirat Rex si vult, tanquam suum proprium.

I wish the chief Magistrate could admit them on these Terms, for so they, and all theirs (*omnia sua*) should be *suum proprium*, which possibly might supply him with Money and so save Taxes.

And

And upon these Terms I, (and I believe every body else) will willingly consent to their Readmission.

If any desire further Satisfaction in this particular, either from Civilians, Schoolmen, Casuists, Canonists, Historians, or other Divines, he may consult these or such like :

I. *Justinian Cod. de Judæis & Calicolis*, lib. 1. tit. 12. and the Gloss there.

II. *Codex Theodosianus de Judæis, Calicolis, & Samaritanis*, lib. 16. tit. 8. pag. 515.

III. *Jacobi Sirmondi Appendix Cod. Theodosiani*, leg. 6. pag. 14. & leg. 4. pag. 11.

IV. *Marquardus de Susanis Tractatu de Judæis, & aliis Infidelibus inter tractatus Illustrum*, tom. 14. pag. 28. Vide Bernardum, Hieronimum, Alexan-

76. *The Case of the Jews.*

*Alexandrum I^{um}, aliosque Auctores
ab eo ibidem citatos.*

V. *Mathæus Wesenbecius in Comen-
tario in Codicem Justinianum de Ju-
deis, tit. 9. pag. 14.*

VI. *Decretum Gregorii extra de Ju-
deis, & Saracenis, lib. 6. tit. 6.*

VII. *Clementinar. lib. 5. tit. 2. de
Judæis.*

VIII. *Corvini Jus Canonicum, tit. de
Judæis, pag. 295.*

IX. *Fredericus Balduinus Casuum
Conscientiæ, lib. 2. cap. 6. casu 5. pag.
188.*

X. *Capitulare Caroli Magni, lib. 6.
cap. 120. & cap. 308.*

XI. *Hen. Altingus Problematum The-
olog. part 2. problemate, 21. pag.
340.*

XII. *Petrus Crespetius in summa Ec-
cles. Disciplinæ Verbo Judæus; pag.
520, &c. fusc.*

XIII. *Phil. Melancthon. Epist. lib. 1.
epist. 68. pag. 75. In Edit. Corn. Bee.*

XIV. *Mar-*

XIV. *Martinus Becanus in compendio manualis*, lib. 5. cap. 17. pag. 509.

XV. *Decretum Concilii Viennensis contra Judæos apud Hen. Canisium Lect. Antiquarum*, tom. 1. pag. 621. & *apud Binium*, tom. 3. parte alterâ, pag. 1493.

XVI. *Filucius Casuum Conscientiæ*, tract. 22. cap. 5. pag. 40. col. 2. de *Judaismo*.

XVII. *Johannes de Lugo, de virtute fidei divinæ*, disput. 22. sect. 4. & *Auctores ibi citat.*

XVIII. *Bodinns de Repub.* lib. 3 & 4.

XIX. *Statutum de Judaismo apud D. Edvardum Cooke Institit.* part. 2. pag. 506. & *Commentarium ejus in dictum Statutum.*

XX. *Aquin.* 2. 2^a quæst. 10, 11! *Ubi varia occurrunt de Judæis.*

XXI. *Erasmus Brockmannus Systemate Theologiæ universæ*, art. 41. cap. 2. quæst.

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2. quæst. 9. tom. 2. pag. 5043.

XXII. *Basilica Lenuclavii*, lib. 1.
tit. 1. cap. 9. de *Judæis*, Pag. 2.

XXIII. *Hieronymus de sanctâ fide*,
lib. contra *Judæos*.

XXIV. *Petrus Galatinus de Arcanis Catholica veritatis*.

XXV. *Gilbertus Genebrardus in Symbolæ fidei Judeorum è R. Mos. Ægyptio*, &c.

XXVI. *Vide etiam (si placet) Scriptores (innumeros penè) quos exhibet Georgius Drandius in Bibliothecâ Classicâ inter Libros Theologicos*, pag. 349, 350, &c. *Alii alios de facili addant.*

F I N I S.

XXI. ...
XXII. ...
XXIII. ...
XXIV. ...
XXV. ...
XXVI. ...
XXVII. ...
XXVIII. ...
XXIX. ...
XXX. ...

THE

CASE

CHURCHES

THE
CASE
Of Setting up IMAGES
IN
CHURCHES.

A Breviate of the Case con-
 cerning Setting up Images
 in the Parish-Church of
 Moulton, in the Diocese
 and County of Lincoln.
 Anno 1683.

UPON presence of adorning
 & beautifying the Church,
 some of the Parishioners did
 1. Wash out all the sentences
 of Scripture formerly writ upon
 the Walls in that Church.
 2. Then (without the Appro-
 bation and Advice, or the general
 Consent of the Parish) they set up
 the Images of five or six of the Apo-
 stles; which giving great Offence,
 (for thirty seven of the * Parishioners
 did under their Hands protest against
 it) they procured an Order from the
 Deputy-Chancellor of Lincoln, to

* I have the
 original Protes-
 tation, signed of
 thirty seven of
 the Parishioners
 Hatched

A Breviate of the Case concerning Setting up Images in the Parish-Church of Moulton, in the Diocess and County of Lincoln, Anno 1683.

UPON pretence of adorning & beautifying the Church, some of the Parishioners did,

1. Wash out all the Sentences of Scripture formerly writ upon the Walls in that Church.

2. Then (without the Approbation and Advice, or the general Consent of the Parish) they set up the Images of five or six of the *Apostles*; which giving great Offence, (for thirty seven of the * Parishioners did under their Hands protest against it) they procured an Order from the Deputy-Chancellor of Lincoln, to

* I have the original Protestation, signed by thirty seven of the Parishioners Hands.

The Case of setting up

approve and confirm what they had done, and authorize them to set up (as they were pleased to call them) more Effigies.

3. By this Order and Authority they set up the Images of *thirteen Apostles*, Sr. Paul being one: the Image of Peter they placed above the Ten Commandments; and that of Paul above the King's Arms; and the Holy Ghost in the Form of a Dove, over them; and (in con-

† Exod 34.
30, 35. In the
Vulgar Latine it
is, Facies Moſis
erat Cornuta:
Whereas their
own moſt Lear-
ned Translators
(Arias Monta-
nus and Pagi-
nine) are aſha-
med of it; and
(as our Engliſh
Version truly has
it) render it,
Reſplendebat,
aut Promicabat
Facies Moſis.

tempt of the Translation of the Bible, approved and received in the Church of England, and in compli-
ance with the erroneous and ridiculous
Vulgar † Latine) they picture Moſes
with Horns.

4. Then (when they had done
all this) they did (ex post facto) pe-
tition the Bishop for his Approba-
tion of what they had done, who
denied their Petition, and for Rea-
sons given them (some of which

here

here follow) told them, that he never would, nor (de jure) could approve what they (without and against Law) had done.

5. Lastly, The Chancellor nulls the Order of his Deputy, as to the setting up of those Images: and those who had done that Work (without the Consent of the Parish) appeal to the Arches, where now that Appeal depends.

This is the Sum of what the Painter and Parishioners have done, (in setting up so many and such Images, as (I believe) no Church in England has seen since our Reformation, and (I hope) never will permit) and what the Deputy Chancellor (as he and they think) confirmed. But what they have done is Unlawful and absolutely Illegal, contrary to our known Laws, against the Authority and Doctrine of the Church of England, Declared and Established

The Case of setting up

both by our Ecclesiastical and Civil
Lords, and to omit others in
these Particulars. ||

It is confessed, that to beautify
Churches (which they pretended) is
a Pious and Worthy Work. But in
doing this, the Way they took was
Unwarrantable and Illegal. For our
Supreme Power Ecclesiastical (the
King in || Convocation) requires

That our Churches should be decently
beautified, not according to the Hu-
mour of an ignorant Painter and some
few Parishioners, but according to
an * Homily published for that pur-
pose: in which Homily (compa-
red with the 2d Part of the * Homily
by for the right Use of Churches) ap-
pears, that Images are so far from
beautifying, that, if they be set up,
they defile and pollute our Churches.

Their razing out the Sentences
of Scripture formerly writ upon
the Walls, was absolutely Illegal, and
by

¶ Vide Canones
Jacobi, Can.
85.

* The Homily for
comely Adorning
of Churches, in
the 2d Book of
Homilies, p. 77.
Edin. London.
Chyn. King's
Authority. 1600.
1633. Which
Edition I have
always seen.
¶ In the 2d Book
of Homilies, pag.
77. compared
with p. 80. of
the same Book.
¶ In the 2d Book
of Homilies, pag.
77. compared
with p. 80. of
the same Book.
¶ In the 2d Book
of Homilies, pag.
77. compared
with p. 80. of
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of Homilies, pag.
77. compared
with p. 80. of
the same Book.
¶ In the 2d Book
of Homilies, pag.
77. compared
with p. 80. of
the same Book.

by no Law Warrantable. For those
Sentences were placed there
appears by the Canon Bole
Supreme Power of the King in Con-
vocation; and therefore for the
Parish and Parishioners to take away
that, which the Supreme Power
by expresse Canon placed there, must
of necessity be Unwarrantable and
absolutely Illegal.

Nor could the Deputy-Chancellor's Order (given *ex post facto*) confirm what they had illegally done!

For it is both Reason and Law, that
a Quality is not capable of Confirmation,
because Confirmation always pre-
supposeth some antecedent Right in
the thing to be confirmed: It does
not give a Right, but does only
strengthen an antecedent infirm Right.

Now it is certain that the Parisians had no Right to raze out those Texts of Scripture, which the Supreme Authority had placed there.

¶ See the Canon
I Jacobi, Can.
82.

82
i. Jacobi, Car.
Vide Canonice

of the County of ...

* Confirmacio
est Juris pñus
habiti Corro-
boratio. Cop
inter Dilectos
ext. de Fide
Instrument.

¶ Qui contra
matrimonium,
non censetur
dare. *8 Paulus*
Leg. Si don-
ta, & si Spon-
sus, §. de Do-
nat. Inter Vi-
rum & Uxo-
rem, & Leg. &
quia. §. de
Testific.

and therefore no Order (got no by) could confirm what they had
 already done.

Nor could the Deputy Chan-
 cellors Order (if they had produc-

ed it before they went to raze but
 those Texts of Scripture formerly
 writ upon the Walls) have given
 them any just Power to raze out

those Texts; it being impossible
 that any inferior Judg or Court should
 null the Sentence of the Suprema. (1699
 6. Reg. 64.

I know that Pope Gregory the
 First (one of the first Introducers
 of Popish Superstition about Im-
 ages) tells us, that Images are Lay-

mens Books, and that Pictures are
 as profitable to Idiots who cannot
 read the Scriptures as to those who can read
 them.

An Assertion evidently eri-
 gorous and impious. And yet
 the Trent Conventicle, to the same
 purpose, saith, That Images instruct
 and confirm the People in the articles
 of

¶ Quæ contra
 Jus sum, de-
 bent pro Infe-
 ris haberi. Di
 Reg. 7. in
 6. Reg. 64.

¶ Quod legen-
 tibus Scriptu-
 ra, hoc Idiotis
 præstat Pictura
 illam cernenti-
 bus, &c. Gre-
 gorius Magnus
 Epist. ad Sen-
 num, Tom. 4.
 pag. 349. Vide
 eundem, Tom.
 4. Epist. 34. ad
 Secundianum,
 pag. 271.

¶ Quod legen-
 tibus Scriptu-
 ra, hoc Idiotis
 præstat Pictura
 illam cernenti-
 bus, &c. Gre-
 gorius Magnus
 Epist. ad Sen-
 num, Tom. 4.
 pag. 349. Vide
 eundem, Tom.
 4. Epist. 34. ad
 Secundianum,
 pag. 271.

† Erare me-
suerunt, qui
Christum & A-
postolos, non in
sanctis Codici-
bus, sed pictis
in Parietibus
quæverunt.
Alleg. de Con-
fess. Evangelist.
cap. 10. Tom. 4.
pag. 377. Edit.
Basil. 1569.

Jesus Christ and his Apostles, not in
the Sacred Scriptures, but in Images
and Pictures.

I know that the Painter and those
few Parishioners, who were for to
take away those Sentences of Scripture
anciently writ upon the Walls,
have instead of them, with some
other Sentences of Scripture in se-
veral Places where none were be-
fore. But this does not excuse, but
rather aggravate their Crime. For,
1. This was not done at some
time after they had finished their
Work, washed out the Texts of
Scripture anciently writ upon the
Walls, and set up all their Images!
When finding what they had done
displeased many, (particularly their
Bishop) and that their Proceedings
were censured as Illegal, and by no
Law warrantable; then, and not
till then, they caused some other
Texts of Scripture to be writ upon
the Walls.

2. And

And this they did without any Advice or Direction of their Minister, or any who had the Cure of their Souls. Whereas the Canon required, that chosen Sentences of Scripture should be writ upon the Walls. And we may be sure that the pious and learned King and Convocation, who made that Canon, did not intend that the ignorant Painter and poor Parishioner, but some who had more Understanding, and Cure of their Souls, should choose such Sentences as should be for the Peoples Edification, most plain and pertinent. But no more of this. For although what the Painter and a few private Persons, did against the Canon and Constitution of the Supreme Power was illegal, and by no Law Warrantable, yet the setting up Images in the place of those Sentences of Scripture, which they have razed,

The Case of setting up

was much worse, as being repugnant and directly contrary to the Doctrine of the Church of England, which has been and is approved, and by our Supreme Power at present stands established by our good Laws Ecclesiastical and Civil. That this may evidently appear, it is to be considered,

1. That the Popish Church in their Trent Council, (which to them is an Oecumenical and General Council) does define and command, in order to their Superstitious and idolatrous Worship of them, That the Images of their Saints be had and retained more especially in Churches, where the poor People may see, and have opportunity to worship them.

2. That in the Reformation of our Church, our Supreme Power who regularly began, and piously and happily finish'd it, expressly condemn'd not only the worshipping

of

* Imagines Christi, Deiparae Virginis, & aliorum Sanctorum, in Templis praesertim habenda & retinenda, eiusque Veneratio debita impendenda. Concil. Trident. Sess. 25. in Decreto de Invocat. & Venerat. Sanctorum & sacris Imaginibus.

of Images, but the having them in our Churches.

This does evidently appear in our Authentick Records (to say nothing of our Learned particular Writers) published by Supreme Authority to that purpose. For,

By the Injunctions of Edw. 6.

it is commanded thus, † They shall take away and utterly destroy all Shrines, Sec. and all Pictures, Paintings, and all Monuments of Idolatry and Superstition, that there remain no memory of them in Walls, Windows, or elsewhere,

Sec. And about three or four

Years after, in the same King's time, it is by Act of Parliament expressly required, That all Images, graven, carved or painted, which yet stand in any Church, should be defaced and destroyed. And though this Statute (in favour of Popish Superstition and Idolatry) was re-

pealed

† See the Injunctions of Edw. 6. to all his Subjects, as well Clergy as Laity, Anno 1547. Anno Regni sui. Injunct. 29.

* Statutum Mariz, cap. 2.

† Statutum
Jacobi. cap.

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pealed by Q. Mary, yet that Queen's Statute was by good R. James I repealed, and to prevent and discourage Popery, that Statute of Edw. 6. was expressly revived, and so remains still obligatory.

3. Queen Elizabeth in her Injunctions, In her 23. renews the Injunction of Edw. 6. in the same Words, That all Images, Paintings and Pictures, should be taken out of all Churches, &c.

4. And the Homilies published by Q. Elizabeth tell us, that Images de facto were taken out of Churches. For the Homily says, That the Churches were scoured and swept from the sinful and superstitious Fithiness which defiled them. By which, as appears by the said Homilies, Images are principally meant.

See the Homily for repairing and adorning of Churches, pag. 80. in the Edition of our Homilies, Anno 1633. Part 2. and this Homily is approved and confirmed by the King and Convocation, 1 Jacobi, Anno 1603. Can. 85.

† See the second Part of the Homily for the right use of Churches, pag. 71. of the second Book of Homilies of the aforesaid Edition, 1633.

To the same purpose Camden in his Life of Q. Elizabeth, tells us, That Images were actually removed out of our Churches, by the Authority of Parliament.

6. Once more, the learned and incomparable Bishop * Jewel, in his Defence of his Apology of the Church of England, doth both say and prove, that Images ought not to be in any Churches, or Places of God's Publick Worship.

By the Premises it may, and I believe does appear, that in the Judgement of the Church of England, Images are not to be tolerated in our Churches, and Places of God's Publick Worship; and therefore they were removed and defaced by the Supreme Powers Ecclesiastical and Civil, declared and published in Canons of Convocation, and Acts of Parliament.

But here it is objected by the Enemies of our Church and Reformation,

Reverend
Elizabeth, Lib.
7. ad Annum
1559. pag. 17.
& 20. of the
English Edition.

* See B. Jewel's
Defence of the
Apology of the
Church of England
London, 1621.
pag. 101
446. 447.

mation. That our Reformers have been so zealous and indifferently fierce against Images, that they have condemn'd the ingenious Art of Painting, and even the civil Use of Images.

But

But this is a malicious Calumny, and no real Consequence of our Churches Doctrine about Images, as has been expressly and publicly declared both by our Church and State. For,

1. Our Church has declared her Judgment, that all Images are not absolutely & unlawful, or simply forbidden in the New Testament, but only some, in some Places and Circumstances, when they may (especially to poor ignorant People) be dangerous Occasions of Superstition and Idolatry: and more expressly a little after, the Words are there; We are not so scrupulous, as to abhor Flowers wrought in Carpets, Hangings, Arras, &c.

¶ See the third part of the Homily against the Peril of Idolatry, in the beginning of it, pag. 29: of the second Book of Homilies, printed 1633.

¶ In the same Homily against the Peril of Idolatry, pag. 44.

&c. or Images of Princes on their Coin: nor do we condemn the Art of Painting or Image-making, &c. Whence it is evident, that our Church is neither against the Art of Painting, nor any Civil Use of Images.

2. Our State has (by express Act of Parliament) declared, even in the time of our Reformation, That they did not condemn any Civil Use of Images. For even in that Statute in which they severely condemn, and command the defacing Images in Churches, they have this Proviso,

“ * Provided always, That this
 “ Act shall not extend to any Images or Pictures, set or engraven
 “ on any Tomb, in any Church,
 “ Chappel, or Church-Yard, only
 “ for a Monument of any King,
 “ Prince, Noble Man, or any other dead Person, which hath
 “ not commonly been reputed
 “ for a Saint, but that all such

* Vide Statu-
 tibus Annorum
 4. Edwardi
 cap. 10.

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" Images may continue.

Whence it is evident, that our Church at the Reformation, did not condemn any Civil Use of Images, no not in sacred Places, as Church-Yards, Chappels or Churches, much less in other Places. And that we may more distinctly know what Images they condemn'd, and why they would not tolerate them in Churches; It is further to be considered;

† See the third Part of the Homily against the Peril of Idolatry, in the second Book of Homilies, pag. 40.

|| Dent. 4. 12, 15, 16, 23. Isa. 40. 18. Rom. 1. 23, 24.

* See the last named Homily, Book 2. p. 42.

1. That the Church of England absolutely condemns all Images of the Trinity, or any † Person in it, (Father, Son, or Holy Ghost) as absolutely unlawful, and expressly condemned in || Scripture. Such Images are not to be tolerated neither in nor out of Churches.

2. No Images of our * Blessed Saviour, of any Saints and Martyrs, (which with stupid Superstition and Idolatry have been, and still are

are worshipped in the Popish Church) are, in the Judgment of our Church, to be tolerated in our Temples, or any Place of God's publick Worship. For if they be, it will be to the great and † unavoidable danger of Idolatry. This, I conceive, is the approved and received Doctrine of the Church of England: and that it may more plainly and distinctly appear to be so, I shall cite the Judgment of our Church, and her Reasons for it, in her own express Words. And amongst other things (too many to be transcrib'd) she plainly tells us;

1. That it is an ungodly thing † to set up Images or Idols (which in her Judgment signify the same thing) in our Churches, because it may give a great occasion of worshipping them.

2. That Images in Churches, painted in Clothes or Walls, are † unlawful, and contrary to Christian Religion.

‡ In the second Book of Homilies, pag. 7.

* Ibidem, pag. 12, 13.

† In the second Book of Homilies, pag. 24.

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¶ Ibidem, pag.
42.

3. That setting up Images in Churches, is to the great and unavoidable danger of Idolatry, and that the Law of God is * against it.

* Ibidem, pag.
43.

† Ibidem, pag.
45, 46.

4. That the setting up the Image of God, of our † Blessed Saviour, or any Saints, is not tolerable in Churches, but against God's Law.

¶ Ibidem, pag.
55.

5. Wo be to the setters up and maintainers of Images in Churches.

* Ibidem, pag.
56, 58, 60, 61.

6. It is not possible, if Images be in Churches, to * avoid Idolatry.

† Ibidem, pag.
61, 75.

7. Images of God, our Blessed Saviour, and the holiest Saints, are of all others the † most dangerous to be in Churches.

¶ Ibidem, pag.
65.

8. Images in Churches are a † Snare and tempting of God, to the great danger and destruction of many.

* Ibidem, pag.
72. Hab 2. 18.

Rom. 1. 23, 25.

† Ibidem, pag.
75.

9. That Images in Churches, in the Judgment of the Prophet and Apostle, are only * Teachers of Lies.

10. God's horrible Wrath cannot be avoided, without † utter abolishing Images in Churches.

This

This is evidently the express Doctrine of our Homilies, which absolutely condemns not only the worshipping, but having Images in our Churches. And it is no less evident, that the Homilies, and the Doctrine contained in them, are both approved, received and established by the Supreme Authority of our Church and State, Canons of Convocation, and Acts of Parliament. This will appear,

1. By the Testimony of King James, who commends the diligent reading of our *Articles and Homilies*, set forth by the Authority of the Church of England.

|| See R. James his Directions to the Clergy of England, Anno 1622. They are in Dr. Heylin's Cyprianus Anglicus, pag. 93. Direct. 1, 4.

2. By the Convocation of Q. Elizabeth, (the Supreme Ecclesiastical Power) which expressly and particularly names and approves all our Homilies, and declares the Doctrine contained in them, to be a godly Doctrine, as appears by the *Articles*

* In the 35th Article.

The Case of setting up

of our Church, composed and published in that Convocation.

3. By the Convocation of *Jacobi*

For as the Article last named declares our Homilies to contain a

† Convocation
of *Jacobi*, Can.

godly Doctrine, so the † Convocation of King James, declares all things contained in that Article, to be agreeable to the Word of God.

|| Ibidem, Can.
36.

4. All the Clergy of || England, all Graduates in the Universities, all

* Ibidem, Can.
127.

* Chancellors, Commissaries and Officials, before they exercise any Ecclesiastical Jurisdiction, are wil-

† Ibidem, Can.
36.

lingly, and ex animo † to assent, consent, approve, and subscribe these Articles, and this Doctrine, and that ab-

|| *My Ld Coke's Institutes*, Part
4. cap. 74. pag.
323, 324.

solutely, without any || Glasses or Sen-
ses of their own.

* See the Statute
13 Eliz. cap.
12. and the Sta-
tute 14 Car. 2.
The Act of Uni-
formity.

5. And these Subscriptions are required (and so the Doctrine sub-
scribed to confirm'd) by several
* Acts of Parliament.

6. And

6. And if any impugn this Doctrine, so declar'd and establish'd by the Supreme Power, nor maintain any Doctrine contrary or repugnant to it, he is by our † Canons to be excommunicated ipso facto; and by the || Statute, if he be a beneficed Clergyman, deprived.

† Vide Canones
1 Jacobi, Can. 5.
|| Statutum 13
Elizabethæ,
cap. 12.

The Premises being certain and evident Truths, the natural and necessary Consequences which follow from them, to omit others, will be these.

That neither the Deputy-Chancellor of Lincoln, nor any inferior Court, has or can have any just Authority or Power to approve and authorize the setting up of such Images in the Church, which by the Supreme Power (Ecclesiastical and Civil, in Convocation and Parliament) is expressly condemn'd

as altogether unlawful, and to the
poor ignorant People pernicious.

12. That they who maintain and
encourage this Doctrine of setting
up Images in our Churches, if they
persist in it, are by our known
Laws now in Force, to be *excom-*
municated ipso facto; and if they be
beneficed Clergy-men, to be depriv-
ed. *Viderint quorum interest.*

3. And if any Ecclesiastical JUDGE
or Court (*quod absit*) should ap-
prove, authorize or encourage the
setting up of such Images in our
Churches, it evidently follows
from the Premises, that in so do-
ing, they approve and authorize
that which the Church of *England*
has publicly declared to be dan-
gerous, against the Law of God,
against Christian Religion, and (to
many) pernicious. And therefore

we

we have reason to believe, that no
good Son of the Church of Eng-
land, will approve, authorize or
encourage that which his Holy
Mother has so absolutely and pub-
lickly condemned.

And if any Ecclesiastical Judge
of Court (and also) should ap-
prove, authorize or encourage the
setting up of such Images in our
Churches, it evidently follows
from the Premises, that in so do-
ing, they approve and autho-
rize that which the Church of Eng-
land has publicly declared to be dan-
gerous, against the Law of God,
against Christian Religion, and (to
many) pernicious. And therefore

Quæritur, An Dominum fundatur in
Gratiâ, & non in Gratia?

In Answer to this, I shall say
only a few things, which (to

A Friend of the late Bishop of Lincoln's,
observing how customary it is to Pro-
testant Writers to charge on the Papists,
the Tenet of Dominum fundatur in
Gratiâ, requested his Lordship to resolve
him how far the said Tenet is charge-
able on the Church of Rome. And
thereupon his Lordship was pleased to
send him under his own Hand a Paper
writ as followeth.

Divines, especially and clearly by
the Decretum of 21st January 1547.
2. The Papists (who are both the
Accusers and Judges) do impute
this Opinion to Wickliffe and his
and their Followers, and condemn
the Opinion, and them for it, as
Hæreticks, for saying, that Domi-

Quæritur, An Dominium fundetur in Gratia?

IN Answer to this, I shall say only a few things, which (to me) seem certain and evident Truths.

1. The Question must be held Negatively; *Dominium non fundatur in Gratia*: Neither *Dominium Temporale*, of Kings or Lay-Magistrates; nor *Dominium Spirituale*, of the Bishops and Clergy. This has been evidently proved by many of our Divines, especially and clearly by Dr.* Davenant Bishop of Salisbury.

2. The Papists (who are both the Accusers and Judges) do impute this Opinion to Wickliff and Hus, and their Followers, and condemn the Opinion, and them for it, as Hereticks, for saying, that *Domi-*

* In his Book entitled, *Determinatione Questionum quarundam Theologicarum, &c.* printed at Cambridge, 1634. Quest. 30. pag. 130.

um fundatur in Gratia: which is a manifest Calumny, and no just or proved Accusation; as might be proved out of *Hus* his printed Works, and several Manuscript Works of *Wickliff* in *Bodley's Library*. But they bring these lying Accusations against them, that they may have some pretence to destroy and murder them.

3. That erroneous and impious Council of *Constance*, Anno 1413, (which is an Oecumenical and General Council at *Rome*) having confess'd, that our Blessed Saviour did institute the *Eucharist* in both kinds, they blasphemously add, † *Quod non obstante Institutione Christi*, they decree, That the Sacrament should be taken only in one kind. Whence *Luther* would not call it *Concilium Constantiense*, but *Concilium NON-OBSTANTIENSE*. Now this Council condemns this Proposition,

† Concilium
Constantiense,
Sess. 13.

on, *Dominium fundatur in Gratia*.

1st. In *John Hus* and his Followers.

|| Ibidem, *Sess.*
15.

2dly. In *Wickliff* and his Followers.

* Ibidem,
Sess. 8.

4. I do not find any Popish Author, who affirms and approves this Proposition (*Dominium fundatur in Gratia*) in those very Terms in which the Council of *Constance* had condemned it as *Heretical*: For this were to contradict their own Principles, and approve that for *Truth*, which their Supreme Infallible Guide (a General Council) had *Synodically* declared *Heresy*.

5. But the Church of *Rome* (though in other Terms) doth both profess and practise this Doctrine, that *Dominium fundatur in Gratia*: For they say, that *Dominium fundatur in Fide et Religione Catholica*. (So they miscall *Pope*ry, or the *Roman Religion*) so that if any Man, by

Constitution
Constitution
1513

Apostacy, desert their Religion, or, by Heresy, deny any Article of their Faith, he does not only forfeit his Dominion over his Inferiors, but all his Goods and Livelihood, and his Life here, and eternal Life hereafter. This is the erroneous and impious Doctrine of the Church of Rome, approved and vindicated, not only by their Schoolmen, Casuists, Canonists, Summists, &c. but received into the Body of their Canon-Law, in their last, and (as they say) the most correct Editions of it, and declared and confirmed in their General Councils. That this may appear, I shall (of many hundreds) give you some few, but pertinent and great Instances.

† Aquinas 2.2.
Quest. 42.
Art. 2.

1. Aquinas † says, **PRINCIPI-
BUS** apostatarumibus a Fide, non est ob-
bediendum. And again, when such
an Apostate Prince is excommuni-
cated; *Ipso facto, ejus Subditi a do-
minio*

minia & juramento fidelitatis ejus li-
berati sunt. And a little || before,

*Hæreticus non solum excommunicari,
sed jure occidi potest: & excommuni-
catus ulterius relinquitur judicio seculari,
à mundo exterminandus per mortem.*
His Commentators do believe, and
(as far as they are able) justify this
Doctrine.

¶ Aquinas 2. 2.
Quæst. 11. Art.
3. An Hæreti-
ci sint toleran-
di?

2. *Alphonfus à Castro* is very large
and learned on this Subject, and
proves, first, That for *Heresy* a
Father does lose the Dominion
(and yet that *Dominium* is *jure Natu-
re Patri debitum*) which he had over
his Children; *Propter Heresin* (says
* he) *Pater amittit Jus quod habuit
super filios, &c.* And again, *Do-
minium Politicum amittitur per Here-
sin, ita quod Rex † factus Hæreticus,
ipso jure est Regno suo privatus, & Dux
suo Ducatu, &c.*

* De justa Hæ-
reticorum pu-
nitione, lib. 2.
cap. 7. Operam
pag. 1244. B.

† Idem ibidem,
pag. 1245. B.

3. *Nicolaus Eymericus* in his *Di-
rectorium Inquisitorum*, Parte 2, & 3.
and

and Francis Pegna his Commentator, do assert all and more than I have said, and (out of many Popish Canons and Councils, and Papal Constitutions) fully prove it.

4. The Canon Law tells us, That

¶ Leg. Cum secundum 19. de Hereticis in 60. & cap. Vnguentis 10. Extra. de Hereticis.

* Leg. Statutum 15. de Hereticis in 60.

Bona ¶ *Hereticorum sunt ipso jure confiscata*; and not only so, but their Children are made incapable of any Benefice or Office Ecclesiastical or Civil; * *Hereticorum filii, usq; ad secundam generationem, ad aliquod beneficium ecclesiasticum, seu publicum officium ne admittantur, quod si secus actum fuerit, sit irritum.* There are many other Constitutions in their † Canon Law, which expressly declare, that Hereticks (that is, such as deny any Article of their Popish Creed) lose all Dominion Ecclesiastical and Civil, of which they were justly possessed, before they fell from the Popish Faith into Heresy, as they call it.

† Vide præcipue cap. ad abolendam, 9. & cap. Excommunicamus, 13. Extra. de Hereticis.

5. Last.

5. Lastly, Their Concilium Lateranum Magnum sub Innocentio III. in which there were (for so they tell us) about 1200 Fathers; I say, this great Council (which they acknowledge to be General or Oecumenical) expressly declares, That an Heretick (tho a King or Emperour) does by his Heresy forfeit all his Dominion; and therefore with them Dominion must be in Fide fundatum, that is, in their Apocryphal Popish Faith. For if believing, and continuing in that Faith, do preserve their Dominion; and the rejecting it by Heresy, forfeit it; then it necessarily and evidently follows, that their Roman Catholick Faith is the Foundation of their Dominion, and the Cause which preserves it, as Heresy is the Cause why they lose it. And as this is their Popish impious Doctrine, that not only Subjects, but Supreme Governors,

D

Kings

Kings and Emperors, forfeit their Dominions by Heresy; so the Practice of their Popes has in this case been suitably impious and sinful. I need not go far for evident Instances in particular: *Paul* || III. excommunicates our *Henry* 8, for *Heresy*, absolves his Subjects from all Oaths of *Allegiance*, and declares him to have lost all Right to his Dominions. So *Pius* V. * for the same reason, (because *Q. Elizabeth* was an Heretick) excommunicates and deposes her, and gives her Kingdoms to *Philip* the 2^d of *Spain*, who came with his great *Armada*, and the Pope's Benediction (which brought the Curse of God upon him and his Fleet, for there is no Power or Policy against Providence) to take possession of it, in 1588. In prosecution of these Principles, many hundred thousands have been actually murdered in the

Pa-

|| Vide Bullarium Romanum Romæ, 1638. Tom. 1. pag. 514, 515. The Bull bears date, Jan. 3. 1538.

* Vide Bullam Pij V. in dicto Bullario, Tom. 2 pag. 229. The Bull is dated at Rome, 5 Cal. Maii, 1570.

Papacy; either, 1. By open War, as in *France*, and the Countries adjoining; in *Ireland*, in our late Rebellion, &c. 2. By their bloody *Inquisition*. 3. Or endeavour'd to be murdered by secret Conspiracies, as in our *Gun-Powder* Treason, and many Conspiracies against *Q. Elizabeth*, and our late gracious Sovereign. But his Sacred Majesty having graciously promised to maintain the Church of *England*, as it is by Law establish'd, (who has ever been, and I doubt not, will be faithful in his Promises) this secures me against such Fears, and makes me willing to believe, that the impious Popish Principles shall never be put in Execution in *England*. *Dirum omen, qui solus potest averruncet Deus:*

And because in these Times, many who would be thought Wits, and who by the Vanity and Loosness of their Principles, have been tempted to malign the Clergy in general, and have made the Priest-craft a Term in vogue, it is thought seasonable to stop such Persons in their Career towards Atheism, by letting them see from what Forge the virulent Expression of Priest-craft came. Nor yet is this late Reverend Bishop's Testimony given in his Letter against the Rebellion of 41, fit to be conceal'd.

To &c.

My Honoured Friend, -

I Received yours, and return (what is most due for that and many more Civilities) my hearty Thanks. News here we have none, and so I cannot requite your Kindness, by sending you (what you so kindly send me) Intelligence. You have seen (I believe) *Machiavel's Works* (translated out of *Italian* or *Latine*) in *English*, which came out the last Year, 1675. The Printer (in the second Page) says, it was *Licensed*, but tells us not by whom. In the end of it, there is a *Letter of Machiavel's* (so 'tis pretended) in *Vindication of his Writings*. That Letter in-
deavours two things; 1. To magnify *Democracy*, (as the best Government) and decry *Monarchy*. 2. To decry the *Clergy* in general (not only

D 3

those

those of Rome) as a sort of People,
 so far from holy, that they have nothing
 left of Integrity or Humanity. He tells
 us of an execrable innate ill Quality in-
 separable from the Priest-craft, and the
 Conjurat[i]on or Spell of their new-invented
 Ordination; and would have them
 rooted out so, as not one Sibra were left,
 &c. When 'twas printed, (by
 whose Authority or Advice I know
 not) a considerable Piece (one
 whole Leaf in Folio) was left out,
 which I have in MS. and do here A
 enclosed send you a Copy of it. The
 business of that Piece which is
 left out, is to tell us, what is not a
 Rebellion, (so he pretends;) and if
 his Principles be true, we have had
 no Rebellion in England this 40 Years.
 My humble Service to your Neigh-
 bour, and my honoured Friend. I am
 in extreme haste, and

Your affectionate Friend and Servant,

Tho. Lincolne.

2. Coll. Oxon.
 May 11,
 1676.

*Omitted out of Machiavel's
Letter, in Vindication of
himself and his Writings,
between pag. 4, & 5.*

NOW having gone thus far
in the Description of Rebel-
lion, I think my self obliged to tell
you what I conceive not to be Re-
bellion. Whosoever then takes up
Arms to maintain the Politick Con-
stitution or Government of his
Country in the Condition it then is,
I mean to defend it from being
changed or invaded, by the Craft
or Force of any Man, (altho it be
in the Prince or Chief Magistrate
himself) Provided that such taking
up of Arms be commanded or au-
thorized by those, who are by the
Orders of that Government legally
intrusted with the Custody of the
Liberty.

Liberty of the People, and Foundation of the Government; this I hold to be so far from *Rebellion*, that I believe it laudable, nay, the Duty of every Member of such Common-wealth: for he who fights to support and defend the Government he was born and lives under, cannot deserve the odious Name of *Rebel*, but he who endeavours to destroy it.

If this be not granted, it will be in vain to frame any mixt Monarchies in the World; yet such is at this Day the happy Form under which almost all *Europe* lives, as the People of *France*, *Spain*, *Germany*, *Poland*, *Swedeland*, *Denmark*, &c. wherein the Prince hath his Share, and the People theirs; which last, if they had no means of recovering their Rights, if taken from them, or defending them, if invaded, would be in the same Estate,

Estate, as if they had no Title to them, but lived under the Empire of *Turkey* or of *Muscovy*.

And since they have no other Remedy but by Arms, and that it would be of ill consequence to make every private Man judg when the Rights of the People (to which they have as lawful a Claim as the Prince to his) are invaded, which would be apt to produce frequent, and sometimes causless, Tumults; therefore it hath been the great Wisdom of the Founders of such Monarchies, to appoint Guardians to their Liberty, which if it be not otherwise express'd, is, and ought to be understood to reside in the *Estates* of the Country, which for that reason, (as also to exercise their Share in the Sovereignty, as making Laws, levying Monies) are frequently assembled in all these Regions in *Europe* before-

fore-mentioned. These are to assert and maintain the Orders of the Government, and the Laws Establish'd, (if it cannot be done otherwise) to arm the People, to defend and repel the Force that is upon them. Nay, the Government of *Arragon* goes farther; and because in the Intervals of the Estates or Courts, many Accidents may intervene to the prejudice of their *Rights* or *Fueros*, as they call them, they have, during the Intermission, appointed a Magistrate, called *Justitia*, who is, by the Law and Constitution of that Kingdom, to assemble the whole People to his Banner, whenever such Rights are inroach'd upon, who are not only justified by the Laws for such coming together, but are severely punishable in case of Refusal. So that there is no question, but that if the Kings of *Arragon* (at this day
very

very powerful, by the Addition of the Kingdom of *Naples*, and of *Sicily*, and the Union of *Castile*) should in time to come invade their Kingdom of *Arragon* with the Forces of their new Dominions, and endeavour to take from them the Rights and Priviledges they enjoy lawfully by their Constitution, there is no question, I say, but they may (tho their King be there in Person against them) assemble under their *Justitia*, and defend their Liberties with as much Justice, as if they were invaded by the *French*, or by the *Turk*: for it were absurd to think, since the People may be legally assembled to apprehend Robbers, nay, to deliver a Possession forcibly detained against the Sentence of some Inferiour Court; that they may and ought not to bestir themselves,

to keep in Being, and preserve that Government which maintains them in possession of their Liberty and Property, and defends their Lives too from being Arbitrarily taken away.

But I know this clear Truth receives Opposition in this unreasonable and corrupt Age, when Men are more prone to flatter the Lusts of Princes than formerly, and the Favourites are more impatient to hear the Impartiality of Laws, than the Sons of *Brutus* were, who complained, *Leges esse surdas*; that is, though they were fine Gentlemen, in favour with the Ladies, and Ministers of the King's Pleasure, yet they could not Oppress, Drink, Whore, nor Kill the Officers of Justice in the Streets, returning from their Night-Revels;
but

but the Execution of the Laws would reach them as well as others, who in the time of *Tarquin*, it seems, found the Prince more exorable. Nay, the very *Divines* themselves help with their Fallacies to oppugn this Doctrine, by making us believe, as I said before, that it is God's Will all Princes should be Absolute, and are so far in a Conspiracy against Mankind, that they assert that in the Text (*This shall the Manner of your King be*) God was giving that People the *Jus Divinum* of Government, when in truth he was threatening them with Plagues of Monarchy. But I spare the *Divines* here, since I shall have occasion, in discoursing of my next Accusation, to shew how that sort of People have dealt with God's Truths, and with the Interest of Men. And to be as
good

good as my Word, I shall presently fall upon that Point, having been so tedious already in the former.

FINIS.

ERRATA.

Mr. Cottington's Case.

PAge 17. after the last word, *dele* the Period.
P. 63. for *Appella*, read *Apella*. P. 72.
line 2, f. *excuse*, r. *execute*. P. 117. l. 12. f.
Tucin, r. *Turin*. P. 119. f. *Monoch*, r. *Menoch*.
P. 127. l. antepenult. f. *Roe*, r. *Rote*. P. 131.
l. 6. f. *senim*, r. *enim*.

The Case of the Jews.

In Title-Leaf, r. *Republica*.

P. 8. *in margine*, r. *videfis*. P. 14. near the
end, r. *vigilant*. P. 26. l. 2. r. *practised*. P.
43. l. penult. r. *Practices*. P. 63. l. 7. r. *prin-*
cipal. Ibid. f. *two*, r. *too*. P. 70. l. 5. after
was, add *not*.



Hunter pinx:

R. White sculp:



*Herculeas ultra quem jactat rauca columnas
 Tamas nec officio par tamen illa suo)
 En tibi BARLOVUM potuit quæ Sculptor, at ipsa
 Arte licet claram vincit ut umbræ manum
 Ora venusta vides, et nobilis Atria mentis;
 Quod nil et interius nulla Tabella dabit.*

The Tullie P.D.

S E V E R A L
Miscellaneous and Weighty
Cases of Conscience,

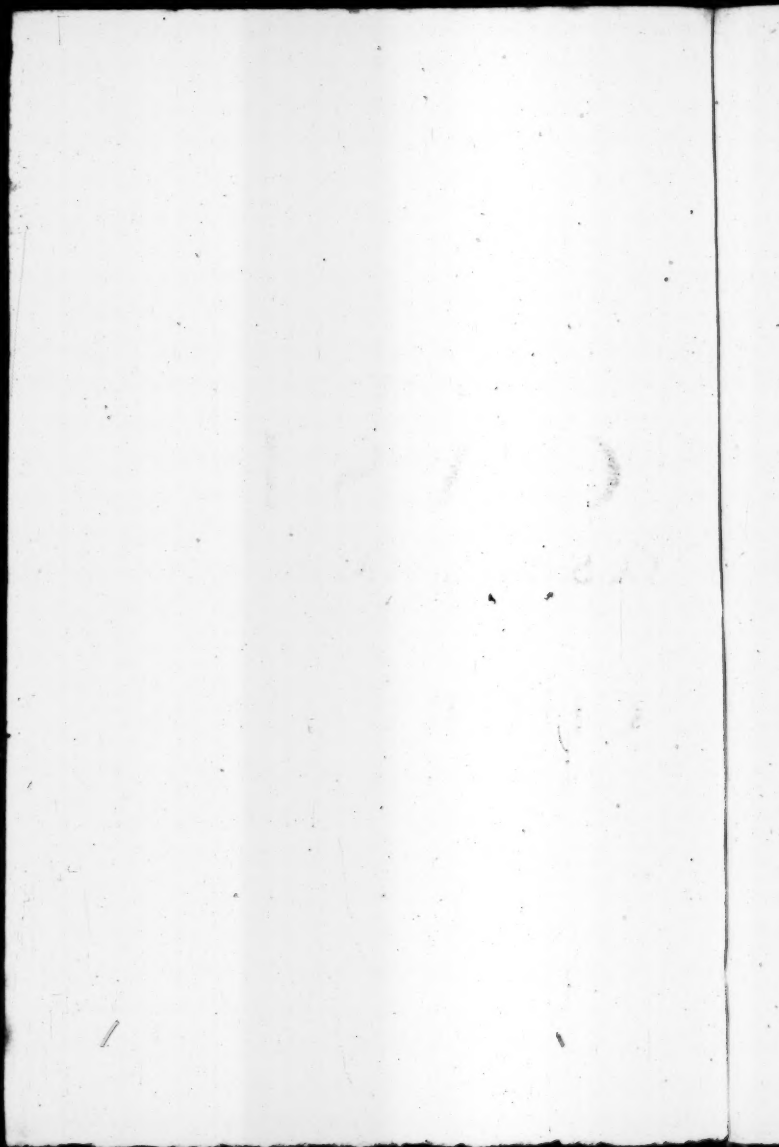
Learnedly and Judiciously Resolved
By the Right Reverend Father in God,
Dr. *THOMAS BARLOW*,
Late Lord-Bishop of *Lincoln*.

V I Z.

- I. Of Toleration of Protestant Dissenters.
- II. The King's Power to pardon Murder.
- III. Objections from *Gen. 9. 6.* answered.
- IV. Mr. *Cottington's* Case of Divorce : With the Judgments of Dr. *Allestrey*, Dr. *Hall*, Sir *Richard Lloyd*, Sir *Richard Raines*, Dr. *Oldys*, and the Doctors of *Sorbonne*, upon the same.
- V. For Toleration of the Jews.
- VI. About Setting up Images in Churches.
- VII. *An Dominium fundatur in Gratiâ?*

With two Pages omitted in the English *Machiavel*, and his Lordship's Censure thereupon.

London, Printed, and sold by Mrs. *Davis*
in *Amen-corner*, 1692.



THE
CASE
Of Setting up IMAGES
IN
CHURCHES.

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A Breviate of the Case concerning Setting up Images in the Parish-Church of Moulton, in the Diocess and County of Lincoln, Anno 168³₄.

UPON pretence of adorning & beautifying the Church, some of the Parishioners did,

1. Wash out all the Sentences of Scripture formerly writ upon the Walls in that Church.

2. Then (without the Approbation and Advice, or the general Consent of the Parish) they set up the Images of five or six of the *Apostles*; which giving great Offence, (for thirty seven of the * Parishioners did under their Hands protest against it) they procured an Order from the Deputy-Chancellor of Lincoln, to

** I have the original Protestation, signed by thirty seven of the Parishioners Hands.*

The Case of setting up

approve and confirm what they had done, and authorize them to set up (as they were pleased to call them) *more Effigies.*

3. By this Order and Authority they set up the Images of *thirteen Apostles*, St. Paul being one: the Image of Peter they placed above the Ten Commandments; and that of Paul, above the King's Arms; and the Holy Ghost in the Form of a Dove, over them; and (in contempt of the Translation of the Bible, approved and received in the Church of England, and in compliance with the erroneous and ridiculous *Vulgar & Latine*) they picture Moses *with Horns.*

† Exod. 34. 20, 35. In the *Vulgar Latine* it is, *Facies Moïsis erat Cornuta:* Whereas their own most Learned Translators (Arias Montanus and Paganine) are ashamed of it; and (as our English Version truly has it) render it, *Resplendebat, aut Promicabat Facies Moïsis.*

4. Then (when they had done all this) they did (*ex post facto*) petition the Bishop for his Approbation of what they had done, who denied their Petition; and for Reasons given them (some of which here

hens follow) told them, that he
 ne-er would, nor (de jure) could ap-
 pr- what they (without and against
 Law) had done.

5. Lastly, The Chancellor nulls
 the Order of his Deputy, as to the set-
 ting up of those Images: and those
 who had done that Work (with-
 out the Consent of the Parish) appeal
 to the Arches, where now that Ap-
 peal depends.

This is the Sum of what the
 Painter and Parishioners have done,
 (in setting up so many and such Ima-
 ges, as (I believe) no Church in
 England has seen since our Refor-
 mation, and (I hope) never will
 permit) and what the Deputy Cham-
 cellor (as he and they think) confir-
 med. But what they have done is
 Unwarrantable and absolutely Illegal,
 contrary to our known Laws, against
 the Authority and Doctrine of the Church
 of England, Declared and Established

The Case of setting up

both by our Ecclesiastical and Civil Laws, and (to omit others) in these Particulars.

1. It is confessed, that to beautify Churches (which they pretended) is a Pious and Worthy Work. But in doing this, the Way they took was Unwarrantable and Illegal; for our Supreme Power Ecclesiastical (the

|| Vide Canones
I Jacobi, Can.
85.

* The Homily for
comely Adorning
of Churches, in
the 2d Book of
Homilies, p. 77.
Edit. London.
(by the King's
Authority)

1633. which
Edition I shall
always cite.

† In the 2d Book
of Homilies, pag.
7. compared
with p. 80. of
the same Book.

King in || Convocation) requires, That our Churches should be decently beautified, not according to the Humour of an ignorant Painter and some few Parishioners, but according to an * Homily published for that purpose; in which Homily (compared with the 2d Part of the † Homily for the right Use of Churches) it appears, that Images are so far from beautifying, that, if they be set up, they defile and pollute our Churches.

2. Their razing out the Sentences of Scripture, formerly writ upon the Walls, was absolutely Illegal, and
by

by no Law Warrantable: For those Sentences were placed there (as appears by the || Canon) by the Supreme Power of the King in Con-
|| See the Canon
I Jacobi, Can. 82.
 vocation; and therefore for the Painter and Parishioners to take away that, which the Supreme Power had by express Canon placed there, must of necessity be Unwarrantable and absolutely Illegal.

Nor could the Deputy-Chancellor's Order (got *ex post facto*) confirm what they had illegally done:

For it is both Reason and Law, that a Nullity is not capable of Confirmation, because Confirmation always presupposeth some antecedent Right * in
* Confirmatio est Juris prius habiti corroboratio. Cap. inter Dilectos, extra de Fidei Instrument.

the thing to be confirmed: It does not give a † Right, but does only strengthen an antecedent infirm Right.
† Qui confirmat aliquid, is non censetur dare. Paulus. Leg. Si donata, & si Sponsus, §. de Donat. Inter Virum & Uxorem, & Leg. quia. §. de Jurisdict.

Now it is certain that the Parishioners had no Right to raze out those Texts of Scripture, which the Supreme Authority had placed there,

and therefore no Order (got *ex post facto*) could confirm what they had *Illegally done*.

3. Nor could the Deputy-Chancellor's Order (if they had procured it before they went to raze out those Texts of Scripture formerly writ upon the Walls) have given them any just Power to raze out those Texts; it being *impossible* that any *inferiour Judge or Court* should null the Sentence of the Supreme.

¶ Quæ contra
Jus sunt, de-
bent pro Infe-
stis haberi. De
Reg. Juris. in
6. Reg. 64.

I know that Pope Gregory the First (one of the first Introducers of Popish Superstition about Images) tells us, that Images are Lay-

* Quod legen-
tibus. Scriptu-
ra, hoc Idiotis
præstat Pictura
illam cernenti-
bus, &c. Grego-
rius. Magnus
Epist. ad Sen-
num, Tom. 4.
pag. 349. Vide
eundem, Tom.
4. Epist. 54. ad
Secundum,
pag. 271.

mens Books, and that Pictures are as * profitable to Idiots who cannot, as the Scriptures are to those who can read them. An Assertion evidently erroneous and impious. And yet the Trent-Conventicle, to the same purpose, saith, That Images instruct and confirm the People in the Articles

of

of Faith † to their great Benefit. But God Almighty by his Prophet tells us, That Images are || Teachers of Lies. This King James of happy Memory, and his pious and learned

† Doceant Episcopi Populum in Articulis Fidei commemorandis, & ex omnibus sacris Imaginibus magnum fructum percipi. Concil. Trident. Sess. 25. in Decreto de Invocatione Sanctorum & sacris Imaginibus.

|| Habak. 2. 18, 19.
Rom. 1. 23, 25.

Convocation well knowing, and that the Church of England had condemned the setting up of Images in our Churches, (as shall anon appear) they Decree and Command, That instead of Popish Images, which were Teachers of Lies, the Ten Commandments, and choice * Sentences of Scripture, should be writ upon the Walls of our Churches, whence (without fear of Error) the People might learn Divine and Infalible Truths. And here the Saying of an antient and excellent Person is worthy of our Memory and Consideration; 'tis this, They deserve to err, who (as the Papists do)

* Canones 1 Jacobi, Can. 82.

seek

† Errare me- *seek † Christ and his Apostles, not in*
ruerunt, qui *the Sacred Scriptures, but in Images*
Christum & A- *and Pictures.*
postolos, non in
sanctis Codici-
bus, sed pictis
in Parietibus
quæsiuerunt.

I know that the Painter and those
few Parishioners, who were for ta-
king away those Sentences of Scripture,
angust. de Con-
sensu Evangelist. *angiently writ upon the Walls,*
cap. 10. Tom. 4.
pag. 377. Edit.
Basil. 1569. *have instead of them, writ some*
other Sentences of Scripture in se-
veral Places where none were be-
fore. But this does not excuse, but
rather aggravate their Crime. For,

1. This was not done till some
time after they had finished their
Work, wash'd out the Texts of
Scripture angiently writ upon the
Walls, and set up all their Images:
When finding what they had done
displeased many, (particularly their
Bishop) and that their Proceedings
were censured as Illegal, and by no
Law Warrantable; then, and not
till then, they caused some other
Texts of Scripture to be writ upon
the Walls.

2. And

2. And this they did without any *Advice or Direction of their Minister*, or any who had the *Cure of their Souls*: Whereas the Canon required, that *chosen Sentences of Scripture* should be writ upon the Walls. And we may be sure that the pious and learned King and Convocation, who made that Canon, did not intend that the ignorant Painter and poor Parishioners, but some who had more Understanding, and Cure of their Souls, should choose such Sentences as should be for the Peoples Edification, most plain and pertinent. But no more of this. For although what the Painter and a few private Persons, did against the Canon and Constitution of the Supreme Power, was Illegal, and by no Law Warrantable, yet the setting up Images in the place of those Sentences of Scripture, which they have crazed,

|| Canones i Jacobi, Can. 82.

Was

The Case of setting up

was much worse, as being repugnant and directly contrary to the Doctrine of the Church of England, which has been and is approved, and by our Supreme Power at present stands established by our good Laws Ecclesiastical and Civil. That this may evidently appear, it is to be considered,

1. That the Popish Church in their Trent-Council, (which to them is an Oecumenical and General Council) does define and command, in order to their Superstitious and Idolatrous Worship of them, That the Images of their Saints be had and * retained more especially in Churches, where the poor People may see, and have opportunity to worship them.

2. That in the Reformation of our Church, our Supreme Powers who regularly begun, and piously and happily finish'd it, expressly condemn'd not only the worshipping

of

* Imagines Christi, Deiparæ Virginis, & aliorum Sanctorum, in Templis præsertim habendæ & retinendæ, eisq; Veneratio debita impertinendâ. Concil. Trident. Sess. 25. in Decreto de Invocat. & Venerat. Sanctorum & sacris Imaginibus.

of Images, but the having them in our Churches.

This does evidently appear in our Authentick Records (to say nothing of our Learned particular Writers) published by Supreme Authority to that purpose. For,

1. By the Injunctions of Edw. 6.

it is commanded thus, † They shall take away and utterly destroy all Shrines, &c. and all Pictures, Paintings, and all Monuments of Idolatry and Superstition, that there remain no memory of them in Walls, Windows, or elsewhere, &c.

† See the Injunctions of Edw. 6. to all his Subjects, as well Clergy as Laity, Anno 1547. Anno Regni huius Injunct. 29.

2. And about three or four Years after, in the same King's time, it is by Act of ¶ Parliament expressly required, That all Images graven, carved or painted, which yet stand in any Church, should be defaced and destroyed. And though this Statute (in favour of Popish Superstition and Idolatry) was * repealed

¶ Vide Statutum Anno 3. & 4. Edwardi 6. cap. 10.

* Statutum 1. Mariae, cap. 2.

† Statutum
1 Jacobi, cap.
25.

pealed by Q. Mary, yet that Queen's Statute was by good K. James † repealed; and to prevent and discourage Popery, that Statute of Edw. 6. was expressly revived, and so remains still obligatory.

|| The Injunctions
of Q. Elizabeth
to all her Sub-
jects, Clergy and
Laity, Anno
1559. Regniq;
sup 1. Injunct.
23.

3. Queen Elizabeth in her || Injunctions, Injunct. 23. renews the Injunction of Edw. 6. in the same Words, That all Images, Paintings and Pictures, should be taken out of all Churches, &c.

4. And the Homilies published by Q. Elizabeth tell us, that Images de facto were taken out of Churches:

* See the Homily
for repairing and
adorning of Churches,
pag. 80.
in the Edition of
our Homilies,
Anno 1633.
Part 2. and this
Homily is approved
and confirmed by the King

For the Homily says, * That the Churches were scoured and swept from the sinful and superstitious Filthiness which defiled them: By which, as appears by the said † Homilies, Images are principally meant.

and Convocation, 1 Jacobi, Anno 1603. Can. 85.

† See the second Part of the Homily for the right use of Churches, pag. 7. of the second Book of Homilies, of the aforesaid Edition, 1633.

5. To the same purpose *Cambden* in his *Life of Q. Elizabeth*, tells us, That Images were actually removed out of our Churches, by the || Authority of Parliament.

|| *Cambden's Elizabeth, Lib. 7. ad Annum 1559. pag. 17, & 20. of the English Edition.*

6. Once more, the learned and incomparable Bishop * *Jewel*, in his Defence of his Apology of the Church of England, doth both say and prove, that Images ought not to be in any Churches, or Places of God's Publick Worship.

* See Bp *Jewel's Defence of the Apology of the Church of England, in his Works printed at London, Anno 1621. pag. 446, 447.*

By the Premisses it may, and I believe does appear, that in the Judgment of the Church of England, Images are not to be tolerated in our Churches, and Places of God's Publick Worship; and therefore they were removed and defaced by the Supreme Powers Ecclesiastical and Civil, declared and published in Canons of Convocation, and Acts of Parliament.

But here it is objected by the Enemies of our Church and Reformation,

Object.

mation, That our Reformers have been so zealous and indiscreetly fierce against Images, that they have condemn'd the ingenious Art of Painting, and even the civil Use of Images.

Sol.

But this is a malicious Calumny, and no real Consequence of our Churches Doctrine about Images, as has been expressly and publickly declared both by our Church and State. For,

1. Our Church has declared her Judgment, that all Images are not absolutely † unlawful, or simply forbidden in the New Testament, but only some, in some Places and Circumstances, when they may (especially to poor ignorant People) be dangerous Occasions of Superstition and Idolatry: and more expressly a little after, the Words are these; We are not

† See the third part of the Homily against the Peril of Idolatry, in the beginning of it, pag. 39. of the second Book of Homilies, printed 1633.

¶ In the same Homily against the Peril of Idolatry, pag. 44.

so ¶ scrupulous, as to abhor Flowers wrought in Carpets, Hangings, Arras; &c.

&c. or Images of Princes on their Coin: nor do we condemn the Art of Painting or Image-making, &c. Whence it is evident, that our Church is neither against the Art of Painting, nor any Civil Use of Images.

2. Our State has (by express Act of Parliament) declared, even in the time of our Reformation, That they did not condemn any Civil Use of Images. For even in that Statute in which they severely condemn, and command the defacing Images in Churches, they have this Proviso,
 “ * Provided always, That this
 “ Act shall not extend to any Ima-
 “ ges or Pictures, set or engraven
 “ on any Tomb, in any Church,
 “ Chappel, or Church-Yard, only
 “ for a Monument of any King,
 “ Prince, Noble Man, or any o-
 “ ther dead Person, which hath
 “ not commonly been reputed
 “ for a Saint, but that all such

* Vide Statu-
tum Anno 3 &
4 Edvardi 6.
cap. 10.

C

“ Ima-

The Case of setting up

“ Images may continue.

Whence it is evident, that our Church at the Reformation, did not condemn any Civil Use of Images, no not in sacred Places, as Church-Yards, Chappels or Churches, much less in other Places. And that we may more distinctly know *what Images they condemn'd,* and *why they would not tolerate them in Churches;* It is further to be considered;

† See the third part of the Homily against the Peril of Idolatry, in the second Book of Homilies, pag. 40.

|| Deut. 4. 12, 15, 16, 23. Isa. 40. 18. Rom. 1. 23, 25.

* See the last named Homily, Book 2. p. 42.

1. That the Church of England absolutely condemns all Images of the Trinity, or any † Person in it, (Father, Son, or Holy Ghost) as absolutely unlawful, and expressly condemned in || Scripture. Such Images are not to be tolerated neither in nor out of Churches.

2. No Images of our * Blessed Saviour, of any Saints and Martyrs, (which with stupid Superstition and Idolatry have been, and still are

are worshipped in the Popish Church) are, in the Judgment of our Church, to be tolerated in our Temples, or any Place of God's publick Worship. For if they be, it will be to the great and † unavoidable danger of Idolatry. † Ibid. pag. 42. This, I conceive, is the approved and received Doctrine of the Church of England: and that it may more plainly and distinctly appear to be so, I shall cite the Judgment of our Church, and her Reasons for it, in her own express Words: And amongst other things (too many to be transcrib'd) she plainly tells us;

1. That it is an ungodly thing || to set up Images or Idols (which in her * Judgment signify the same thing) * Ibidem, pag. 12, 13. in our Churches, because it may give a great occasion of worshipping them.

2. That Images in Churches, painted on Clothes or Walls, are † unlawful, and contrary to Christian Religion. † In the second Book of Homilies, pag. 24.

C 2

3. That

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Ibidem, pag.
42.

3. That setting up Images in || Churches, is to the great and unavoidable danger of Idolatry; and that the Law of God is * against it.

* Ibidem, pag.
43.

† Ibidem, pag.
45, 46.

4. That the setting up the Image of God, of our † Blessed Saviour, or any Saints, is not tolerable in Churches, but against God's Law.

|| Ibidem, pag.
55.

5. Wo be to the setters up and maintainers of Images || in Churches.

* Ibidem, pag.
56, 58, 60, 61.

6. It is not possible, if Images be in Churches, to * avoid Idolatry.

† Ibidem, pag.
61, 75.

7. Images of God, our Blessed Saviour, and the holiest Saints, are of all others the † most dangerous to be in Churches.

|| Ibidem, pag.
65.

8. Images in Churches are a || Snare and tempting of God, to the great danger and destruction of many.

* Ibidem, pag.
72. Hab 2. 18.
Rom. 1. 23, 25.

9. That Images in Churches, in the Judgment of the Prophet and Apostle, are only * Teachers of Lies.

† Ibidem, pag.
75.

10. God's horrible Wrath cannot be avoided, without † utter abolishing Images in Churches.

This

This is evidently the express Doctrine of our Homilies, which absolutely condemns not only the worshipping, but having Images in our Churches. And it is no less evident, that the Homilies, and the Doctrine contained in them, are both approved, received and established by the Supreme Authority of our Church and State, Canons of Convocation, and Acts of Parliament. This will appear,

1. By the Testimony of King James, who commends the diligent reading of our *Articles and Homilies*, set forth by the Authority of the Church of England.

|| See K. James his Directions to the Clergy of England, Anno 1622. They are in Dr. Heylin's Cyprianus Anglicus, pag. 93. Dissert. 1, 4.

2. By the Convocation of Q. Elizabeth, (the Supreme Ecclesiastical Power) which expressly and particularly names and approves all our Homilies, and declares the Doctrine contained in them, to be a godly Doctrine; as appears by the * Articles

* In the 35th Article.

*The Case of setting up
of our Church, composed and publi-
shed in that Convocation.*

3. By the Convocation *i Jacobi*.
For as the Article last named de-
clares our Homilies to contain a

† Convocatio
i Jacobi, Can. 36. godly *Doctrine*, so the † Convocati-
on of King *James*, declares all
things contained in that Article, to be
agreeable to the Word of God.

¶ Ibidem, Can. 36. 4. All the Clergy of ¶ *England*, all
Graduates in the Universities, all

* Ibidem, Can. 127. * (chancellors, Commissaries and Offi-
cials, before they exercise any Ec-
clesiastical Jurisdiction, are wil-

† Ibidem, Can. 36. lingly, and *ex animo* † to assent, con-
sent, approve, and subscribe these Ar-
ticles, and this *Doctrine*, and that ab-

¶ *My Ld Coke's Institutes*, Part 4. cap. 74. pag. 323, 324. solutely, without any ¶ *Glosses* or Sen-
ses of their own.

5. And these Subscriptions are
required (and so the *Doctrine* sub-
scribed to confirm'd) by several
* Acts of Parliament.

* See the Statute
13 Eliz. cap.
12. and the Sta-
tute 14 Car. 2.
The Act of Uni-
formity.

6. And

6. And if any impugn this Doctrine, so declar'd and establish'd by the Supreme Power, or maintain any Doctrine contrary or repugnant to it, he is by our † Canons to be excommunicated ipso facto; and by the || Statute, if he be a beneficed Clergyman, deprived.

† Vide Canones
I Jacobi, Can. 5.
|| Statutum 13
Elizabethæ,
cap. 12.

The Premisses being certain and evident Truths, the natural and necessary Consequences which follow from them, to omit others, will be these.

1. That neither the Deputy-Chancellor of *Lincoln*, nor any inferior Court, has or can have any just Authority or Power to approve and authorize the setting up of such Images in the Church, which by the Supreme Power (Ecclesiastical and Civil, in Convocation and Parliament) is expressly condemn'd

as altogether unlawful, and to the poor ignorant People pernicious.

2. That they who maintain and encourage this Doctrine of setting up Images in our Churches, if they persist in it, are by our known Laws now in Force, to be *excommunicated ipso facto*; and if they be beneficed Clergy-men, to be deprived. *Viderint quorum interest.*

3. And if any Ecclesiastical Judge or Court (*quod absit*) should approve, authorize or encourage the setting up of such Images in our Churches, it evidently follows from the Premisses, that in so doing, they approve and authorize that which the Church of *England* has publicly declared to be dangerous, against the Law of God, against Christian Religion, and (to many) pernicious. And therefore
we

we have reason to believe, that no good Son of the Church of *England*, will approve, authorize or encourage that which his Holy Mother has so absolutely and publickly condemned.

A Friend of the late Bishop of Lincoln's, observing how customary it is to Protestant Writers to charge on the Papists, the Tenet of Dominium fundatur in Gratiâ, requested his Lordship to resolve him how far the said Tenet is chargeable on the Church of Rome. And thereupon his Lordship was pleased to send him under his own Hand a Paper writ as followeth.

Quæritur, An Dominium fundetur in Gratia?

IN Answer to this, I shall say only a few things, which (to me) seem certain and evident Truths.

1. The Question must be held Negatively ; *Dominium non fundatur in Gratia* : Neither *Dominium Temporale*, of Kings or Lay-Magistrates ; nor *Dominium Spirituale*, of the Bishops and Clergy. This has been evidently proved by many of our Divines, especially and clearly by Dr.* Davenant Bishop of Salisbury.

2. The Papists (who are both the Accusers and Judges) do impute this Opinion to Wickliff and Hus, and their Followers, and condemn the Opinion, and them for it, as Hereticks, for saying, that *Domini-*

* In his Book entituled, Determinatio Quæstionum quarundem Theologicarum, &c. printed at Cambridge, 1634. Quæst. 30. pag. 136.

um fundatur in Gratia: which is a manifest Calumny, and no just or proved Accusation; as might be proved out of *Hus* his printed Works, and several Manuscript Works of *Wickliff* in *Bodley's Library*. But they bring these lying Accusations against them, that they may have some pretence to destroy and murder them.

3. That erroneous and impious Council of *Constance*, Anno 1413, (which is an *Oecumenical* and General Council at *Rome*) having confess'd, that our Blessed Saviour did institute the *Eucharist* in both kinds, they blasphemously add, † *Quod non obstante Institutione Christi*, they decree, That the *Sacrament* should be taken only in one kind. Whence *Luther* would not call it *Concilium Constantiense*, but *Concilium NON-OBSTANTIENSE*. Now this Council condemns this Proposition,

† Concilium
Constantiense,
Sess. 13.

on, *Dominium fundatur in Gratia* ;

1st. In || *John Hus* and his Followers. || *Ibidem, Sess. 15.*

2^{dly}. In * *Wickliff* and his Followers. * *Ibidem, Sess. 8.*

4. I do not find any *Popish* Author, who affirms and approves this Proposition (*Dominium fundatur in Gratia*) in those very Terms in which the Council of *Constance* had condemned it as *Heretical* : For this were to contradict their own Principles, and approve that for *Truth*, which their Supreme Infallible Guide (a General Council) had *Synodically* declared *Heresy*.

5. But the Church of *Rome* (though in other Terms) doth both profess and practise this Doctrine, that *Dominium fundatur in Gratia* : For they say, that *Dominium fundatur in Fide & Religione Catholica*, (so they miscall *Papery*, or the *Roman Religion*) so that if any Man, by
Apo-

Apostacy, desert their Religion, or, by Heresy, deny any Article of their Faith, he does not only forfeit his *Dominion* over his Inferiors, but all his Goods and Livelihood, and his Life here, and eternal Life hereafter. This is the erroneous and impious Doctrine of the Church of Rome, approved and vindicated, not only by their Schoolmen, Casuists, Canonists, Summists, &c. but received into the Body of their Canon-Law, in their last, and (as they say) the most correct Editions of it, and declared and confirmed in their General Councils. That this may appear, I shall (of many hundreds) give you some few, but pertinent and great Instances.

† Aquinas 2.2.
Quest. 12.
Art. 2.

1. *Aquinas* † says, *PRINCIPI-
BUS apostatantibus a Fide, non est o-
bediendum.* And again, when such
an Apostate Prince is excommuni-
cated; *Ipso facto, ejus Subditi à do-
minio*

be founded on Grace.

31

minio & juramento fidelitatis ejus liberati sunt. And a little || before,

|| Aquinas 2. 2. Quæst. 11. Art.

Hæreticus non solum excommunicari, sed juste occidi potest: & excommuni-

3. An Hæretici sine tolerandi?

catus ulterius relinquitur judicio seculari, à mundo exterminandus per mortem.

His Commentators do believe, and (as far as they are able) justify this Doctrine.

2. *Alphonfus à Castro* is very large and learned on this Subject, and proves, first, That for *Heresy* a Father does lose the Dominion (and yet that *Dominium* is *jure Naturæ Patri debitum*) which he had over his Children; *Propter Hæresin* (says

* he) *Pater amittit Jus quod habuit super filios, &c.* And again, *Do-*

* De justa Hæreticorum pœnitentia, lib. 2. cap. 7. Operum pag. 1244. B.

minium Politicum amittitur per Hæresin, na quod Rex † factus Hæreticus, ipso jure est Regno suo privatus, & Dux suo Ducatu, &c.

† Idem ibidem, pag. 1245. E.

3. *Nicolaus Eymericus* in his *Directorium Inquisitorum*, Parte 2, & 3.

and

and *Francis Pegna* his *Commentator*, do assert all and more than I have said, and (out of many *Popish Canons and Councils*, and *Papal Constitutions*) fully prove it.

4. The Canon Law tells us, That *Bona* || *Hereticorum sunt ipso jure confiscata*; and not only so, but their Children are made incapable of any Benefice or Office Ecclesiastical or Civil; * *Hereticorum filii, usq; ad secundam generationem, ad aliquod beneficium ecclesiasticum, seu publicum officium ne admittantur, quod si secus actum fuerit, sit irritum.* There are many other Constitutions in their † *Canon Law*, which expressly declare, that Hereticks (that is, such as deny any Article of their *Popish Creed*) lose all *Dominion Ecclesiastical and Civil*, of which they were justly possessed, before they fell from the *Popish Faith* into *Heresy*, as they call it.

|| Leg. Cum secundum 19. de Hereticis in 60. & cap. Vnguentis 10. Extra. de Hereticis.

* Leg. Statutum 15. de Hereticis in 60.

† Vide præcipue cap. ad abolendam, 9. & cap. Excommunicamus, 13. Extra. de Hereticis.

5. Last.

5. Lastly, Their *Concilium Lateranum Magnum sub Innocentio III.* in which there were (for so they tell us) about 1200 *Fathers*; I say, this great *Council* (which they acknowledge to be *General* or *Oecumenical*) expressly declares, That an *Heretick* (tho a *King* or *Emperour*) does by his *Heresy* forfeit all his *Dominion*; and therefore with them *Dominion* must be in *Fide fundatum*, that is, in their *Apocryphal Popish Faith*. For if believing, and continuing in that Faith, do preserve their *Dominion*; and the rejecting it by *Heresy*, forfeit it; then it necessarily and evidently follows, that their *Roman Catholick Faith* is the Foundation of their *Dominion*, and the Cause which preserves it, as *Heresy* is the Cause why they lose it. And as this is their *Popish impious Doctrine*, that not only *Subjects*, but *Supreme Governors*,

D

Kings

Kings and Emperors, forfeit their Dominions by Heresy; so the Practice of their Popes has in this case been suitably impious and sinful.

I need not go far for evident Instances in particular: *Paul* || III.

|| Vide Bullarium Romanum Romæ, 1638. Tom. 1. pag. 514, 515. The Bull bears date, Jan. 3. 1538.

excommunicates our *Henry* 8, for *Heresy*, absolves his Subjects from all Oaths of Allegiance, and declares him to have lost all Right to his

* Vide Bullam Pii V. in dicto Bullario, Tom. 2 pag. 229. The Bull is dated at Rome, 5 Cal. Maii, 1570.

Dominions. So *Pius* V. * for the same reason, (because *Q. Elizabeth* was an Heretick) excommunicates and deposes her, and gives her Kingdoms to *Philip* the 2^d of Spain, who came with his great *Armada*, and the Pope's Benediction (which brought the Curse of God upon him and his Fleet, for there is no Power or Policy against Providence) to take possession of it, in 1588. In prosecution of these Principles, many hundred thousands have been actually murdered in the

Pa-

Papacy; either, 1. By open War, as in *France*, and the Countries adjoining; in *Ireland*, in our late Rebellion, &c. 2. By their bloody *Inquisition*. 3. Or endeavour'd to be murdered by secret Conspiracies, as in our *Gun-Powder Treason*, and many Conspiracies against *Q. Elizabeth*, and our late gracious Sovereign. But his Sacred Majesty having graciously promised to maintain the Church of *England*, as it is by Law establish'd, (who has ever been, and I doubt not, will be faithful in his Promises) this secures me against such Fears, and makes me willing to believe, that the impious Popish Principles shall never be put in Execution in *England*. *Dirum omen, qui solus potest avertuncet Deus.*

And because in these Times, many who would be thought Wits, and who by the Vanity and Loosness of their Principles, have been tempted to malign the Clergy in general, and have made the Priest-craft a Term in vogue, it is thought seasonable to stop such Persons in their Career towards Atheism, by letting them see from what Forge the virulent Expression of Priest-craft came. Nor yet is this late Reverend Bishop's Testimony given in his Letter against the Rebellion of 41, fit to be conceal'd.

To &c.

My Honoured Friend,

I Received yours, and return (what is most due for that and many more Civilities) my hearty Thanks. News here we have none, and so I cannot requite your Kindness, by sending you (what you so kindly send me) Intelligence. You have seen (I believe) *Machiavel's Works* (translated out of *Italian* or *Latine*) in *English*, which came out the last Year, 1675. The *Printer* (in the second Page) says, it was *Licensed*, but tells us not by whom. In the end of it, there is a *Letter of Machiavel's* (so 'tis pretended) in *Vindication of his Writings*. That Letter in-
deavours two things; 1. To magnify *Democracy*, (as the best Government) and decry *Monarchy*. 2. To decry the *Clergy* in general (not only

The Bishop of Lincoln's Letter.

those of Rome) as a sort of People, so far from holy, that they have nothing left of Integrity or Humanity. He tells us of an execrable innate ill Quality inseparable from the Priest-craft, and the Conjurat[i]on or Spell of their new-invented Ordination; and would have them rooted out so, as not one Sibra were left, &c. When 'twas printed, (by whose Authority or Advice I know not) a considerable Piece (one whole Leaf in Folio) was left out, which I have in MS. and do here enclosed send you a Copy of it. The business of that Piece which is left out, is to tell us, *what is not Rebellion*, (so he pretends;) and if his Principles be true, we have had no *Rebellion in England* this 40 Years. My humble Service to your Neighbour, and my honoured Friend. I am in extreme haste, and

Your affectionate Friend and Servant,

Tho. Lincolne.

2. Co. B. Oxon.
May 11,
1676.

*Omitted out of Machiavel's
Letter, in Vindication of
himself and his Writings,
between pag. 4, & 5.*

NOW having gone thus far
in the Description of *Rebel-
lion*, I think my self obliged to tell
you what I conceive not to be *Re-
bellion*. Whosoever then takes up
Arms to maintain the Politick Con-
stitution or Government of his
Country in the Condition it then is,
I mean to defend it from being
changed or invaded, by the Craft
or Force of any Man, (altho it be
in the Prince or Chief Magistrate
himself) Provided that such taking
up of Arms be commanded or au-
thorized by those, who are by the
Orders of that Government legally
intrusted with the Custody of the

Liberty of the People, and Foundation of the Government; this I hold to be so far from *Rebellion*, that I believe it laudable, nay, the Duty of every Member of such Common-wealth: for he who fights to support and defend the Government he was born and lives under, cannot deserve the odious Name of *Rebel*, but he who endeavours to destroy it.

If this be not granted, it will be in vain to frame any mixt Monarchies in the World; yet such is at this Day the happy Form under which almost all *Europe* lives, as the People of *France*, *Spain*, *Germany*, *Poland*, *Swedeland*, *Denmark*, &c. wherein the Prince hath his Share, and the People theirs; which last, if they had no means of recovering their Rights, if taken from them, or defending them, if invaded, would be in the same Estate,

Estate, as if they had no Title to them, but lived under the Empire of *Turkey* or of *Muscovy*.

And since they have no other Remedy but by Arms, and that it would be of ill consequence to make every private Man judg when the Rights of the People (to which they have as lawful a Claim as the Prince to his) are invaded, which would be apt to produce frequent, and sometimes causeless, Tumults; therefore it hath been the great Wisdom of the Founders of such Monarchies, to appoint Guardians to their Liberty, which if it be not otherwise express'd, is, and ought to be understood to reside in the *Estates* of the Country, which for that reason, (as also to exercise their Share in the Sovereignty, as making Laws, levying Monies) are frequently assembled in all these Regions in *Europe* before-

fore-mentioned. These are to assert and maintain the Orders of the Government, and the Laws Establish'd, (if it cannot be done otherwise) to arm the People, to defend and repel the Force that is upon them. Nay, the Government of *Arragon* goes farther; and because in the Intervals of the Estates or Courts, many Accidents may intervene to the prejudice of their *Rights* or *Fueros*, as they call them, they have, during the Intermision, appointed a Magistrate, called *Justitia*, who is, by the Law and Constitution of that Kingdom, to assemble the whole People to his Banner, whenever such Rights are incroach'd upon, who are not only justified by the Laws for such coming together, but are severely punishable in case of Refusal. So that there is no question, but that if the Kings of *Arragon* (at this day
very

very powerful, by the Addition of the Kingdom of *Naples*, and of *Sicily*, and the Union of *Castile*) should in time to come invade their Kingdom of *Arragon* with the Forces of their new Dominions, and endeavour to take from them the Rights and Priviledges they enjoy lawfully by their Constitution, there is no question, I say, but they may (tho their King be there in Person against them) assemble under their *Iustitia*, and defend their Liberties with as much Justice, as if they were invaded by the *French*, or by the *Turk*: for it were absurd to think, since the People may be legally assembled to apprehend Robbers, nay, to deliver a Possession forcibly detained against the Sentence of some Inferiour Court; that they may and ought not to bestir themselves,

to keep in Being, and preserve that Government which maintains them in possession of their Liberty and Property, and defends their Lives too from being Arbitrarily taken away.

But I know this clear Truth receives Opposition in this unreasonable and corrupt Age, when Men are more prone to flatter the Lusts of Princes than formerly, and the Favourites are more impatient to hear the Impartiality of Laws, than the Sons of *Brutus* were, who complained, *Leges esse surdas*; that is, though they were fine Gentlemen, in favour with the Ladies, and Ministers of the King's Pleasure, yet they could not Oppress, Drink, Whore, nor Kill the Officers of Justice in the Streets, returning from their Night-Revels;
but

but the Execution of the Laws would reach them as well as others, who in the time of Tarquin, it seems, found the Prince more exorable. Nay, the very *Divines* themselves help with their Fallacies to oppugn this Doctrine, by making us believe, as I said before, that it is God's Will all Princes should be Absolute, and are so far in a Conspiracy against Mankind, that they assert that in the Text (*This shall the Manner of your King be*) God was giving that People the *Jus Divinum* of Government, when in truth he was threatning them with Plagues of Monarchy. But I spare the *Divines* here, since I shall have occasion, in discoursing of my next Accusation, to shew how that sort of People have dealt with God's Truths, and with the Interest of Men. And to be as
good

good as my Word, I shall presently fall upon that Point, having been so tedious already in the former.

FINIS.

ERRATA.

Mr. Costington's Case.

PAge 17. after the last word, *dele* the Period.
P. 63. for *Appella*, read *Apella*. P. 72.
line 2, f. *excuse*, r. *execute*. P. 117. l. 12. f.
Tucin, r. *Tavin*. P. 119. f. *Monoch*, r. *Menoch*.
P. 127. l. antepenult. f. *Rae*, r. *Rote*. P. 131.
l. 6. f. *senior*, r. *enim*.

The Case of the Jews.

In Title-Leaf, r. *Republica*.

P. 8. *in margine*, r. *videfis*. P. 14. near the
end, r. *vigilant*. P. 26. l. 2. r. *practised*. P.
43. l. penult. r. *Practices*. P. 63. l. 7. r. *prin-*
cipal. Ibid. f. *two*, r. *too*. P. 70. l. 5. after
was, add *not*.